

HUMAN RIGHTS AND THE SYSTEM OF CRIMINAL JUSTICE IN SRI LANKA

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I. Conflicting Postulates of the Law

The laws governing criminal procedure are based on a compromise between conflicting objectives of policy - on the one hand, effective law enforcement which concerns the security of the community as a whole and on the other, the protection of the rights of the accused. In determining its attitude to such matters as the scope of the powers conferred on the police during pre-trial investigations, the admissibility of confessions and the reception of similar fact evidence of character and relevant evidence obtained by illegal means, the law necessarily seeks to achieve an equilibrium between these competing objectives. In an area of the law dominated by broad policy considerations judicial attitudes frequently reflect a divergence of opinion in regard to emphasis and priorities.

In a leading case¹ decided by the Supreme Court of the United States of America regarding the admissibility of a confession made under questioning by the police, the majority underlined the intrinsic value of the privilege against self-incrimination during a period of custodial interrogation: "We are satisfied that all the principles embodied in the privilege apply to informal compulsion exerted by law enforcement officers during in-custody questioning". The minority entertained apprehension as to the deleterious consequences of the decision excluding the confession on law enforcement: "We do know that some crimes cannot be solved without confessions, that ample expert testimony attests

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