THE CRIMINAL PROCEDURE CODE: SOME RECENT AMENDMENTS.

I. INTRODUCTION

The criminal justice system in Malaysia witnessed some significant and far-reaching changes in the later part of 1994 and early 1995. These changes were brought about through amendments to the Federal Constitution,[1] the Criminal Procedure Code (CPC),[2] the Courts of Judicature Act 1964 (CJA),[3] the Subordinate Courts Act 1948 (SCA),[4] and the Kidnapping Act 1961.[5] The Federal Constitution was amended to establish the Federal Court as the highest appellate court in Malaysia. The Federal Court replaced the Supreme Court which was created in 1985. The Courts of Judicature Act 1964 was amended to define the powers and functions of the new Federal Court. The appellate court system was further restructured with the creation of a Court of Appeal as an appellate court in between the High Court and the Federal Court.

[1]Constitution (Amendment) Act 1994 (Act A885).
[2]Criminal Procedure Code (Amendment) Act 1995 (Act A908).
[3]Courts of Judicature (Amendment) Act 1994 (Act A886) and Courts of Judicature (Amendment) Act 1995 (Act A909).
[4]Subordinate Courts (Amendment) Act 1994 (Act A887).
[5]Kidnapping (Amendment) Act 1995 (Act A910).

This note will however only discuss the changes brought about by amendments to the Criminal Procedure Code, in particular, the abolition of preliminary inquiries, abolition of trials with the aid of assessors and jury trials.

II. PRELIMINARY INQUIRIES

Clause 5 of the Criminal Procedure Code (Amendment) Act 1995 was passed to delete Chapters XVII and XVIIA of the CPC. All provisions in those two chapters relating to preliminary inquiries are therefore deleted. The requirement of a preliminary inquiry at a magistrate's court for the purpose of committing an accused person to be tried at the High Court for offences triable at the High Court is thus removed.

Chapters XVII and XVIIA of the CPC were the main provisions relating to preliminary inquiries. Section 138 of the CPC provided that:

> except as otherwise provided in Chapter XLII, no person shall be tried before (the High Court) unless he shall have been committed for trial after a preliminary inquiry...

This section laid down the general rule that where a person stood accused of an offence which was triable by the High Court, a preliminary inquiry would need to be conducted first.

The preliminary inquiry was normally conducted at a First Class magistrate's court, although section 100 of the Subordinate Courts Act also provided that a sessions court had such jurisdiction. The main objective of such inquiry was to determine whether there were sufficient grounds for committing the accused for trial before the High Court. There were some situations where the preliminary inquiry was dispensed with, for example:

(a) where a transfer of the case had been ordered by the High Court under the provisions of section 417 of the CPC;

(b) where the Public Prosecutor had issued a certificate requiring any particular case triable by a criminal court subordinate to the High Court to be transferred to the High Court for trial under section 418A of the CPC;

(c) where the case had been transferred by a magistrate or sessions court judge to the High Court (and the case was not one that was ordinarily triable before the High Court)[6] under section 177 of the CPC;

(d) where the accused was charged with a capital offence which was also a security offence; [7]

(e) where the accused was charged with an offence under the Firearms (Increased Penalties) Act 1971, and a transfer was made under section 11 thereof; and

(f) where the accused was charged under the Dangerous Drugs Act 1952, and a transfer was made under section 41A thereof.

The procedure in the preliminary inquiry can be briefly described as follows. The person accused of committing an offence triable at the High Court would be tentatively charged for that offence and would be first produced before a magistrate's court.

The magistrate would then proceed to hear the case for the prosecution and would take all such evidence in support thereof.

The accused would be given the opportunity to cross-examine any witness called. The magistrate may also call for any evidence or witness as he deemed necessary. He

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[6] *PP v Lau Mee Tung* [1978] 1 MLJ 47. See, however, the case of *Fan Yew Teng v PP* [1973] 2 MLJ 1.

[7] R 6 of Essential (Security Cases) Regulations 1975 (ESCAR). For a definition of security offences, see r 2(1) thereof.

may also issue process to compel the attendance of any witness or production of any document or thing for the purpose of the inquiry.

At the end of the case for the prosecution, the magistrate would decide whether there were sufficient grounds to commit the accused for trial before the High Court. If there were no such grounds, he may discharge the accused. This discharge would not, however, amount to an acquittal.[8] On the other hand, if the magistrate was of the opinion that the accused might have committed some other lesser offence, he would frame a charge for that lesser offence and try the case himself or transfer the case to some other subordinate court having the requisite jurisdiction to try the case.[9]

If, after taking the evidence for the prosecution, the magistrate was of the opinion that there were sufficient grounds for committing the accused for trial before the High Court, he would frame a charge for that offence. The charge would then be read to the accused. No plea is to be taken at this stage. The accused would then be given the right to make his defence at the inquiry or reserve his defence until his trial at the High Court. In most cases the accused would elect to do the latter. When this happens, the magistrate would then commit the accused for trial before the High Court.

The procedure mentioned above and the mode of taking the evidence in the inquiry had to be closely adhered to. Failure to comply with this procedure might lead to the inquiry being held to be null and void.[10]

The move to abolish preliminary inquiries may be attributed in quite a significant way to the following criticisms of the procedures. There were views that these inquiries caused delays in the criminal justice process. The general purpose of a preliminary inquiry is to determine whether there is sufficient evidence for the accused to be commit-

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[8] *PP v Theoptilai* [1956] MLJ 177.
[9] *PP v Raja Pandian* [1993] 2 MLJ 486.
[10] *R v Govindasamy Arumugam* [1952] MLJ 80.

ted for trial. It also serves as an evidence-sieving process. Thus a large number of witnesses would be called and much evidence would be adduced by the prosecuting officer, evidence that may eventually be ruled inadmissible by the magistrate or by the trial court. In endeavouring to produce all possible evidence and witnesses, inadvertently postponements become necessary. The preliminary inquiry alone would take weeks and even months to be completed. This is especially unfair to the accused. Justice delayed is, after all, justice denied.

These delays in the conduct of preliminary inquiries in turn cause an increase in the costs of holding preliminary inquiries. The taxpayers pay not only for the costs of witnesses for the prosecution attending the inquiry, but also for the trial proper. The holding of preliminary inquiries also means that the person accused of the offence may be remanded in custody for a far longer period than would be if his case had been brought straight to the High Court for trial. This is especially so since there is very little likelihood, if at all, for bail to be granted.[11]

The large number of other matters dealt with in the magistrates' courts also mean that preliminary inquiries contribute to the immense problem of backlog of cases at the lower courts. Its abolition would leave the lower courts with more time to reduce this backlog.

Another criticism against the holding of preliminary inquiries is that the inquiries serve very little purpose when it comes to the trial proper. The duty of the magistrate is merely to exclude cases in which the evidence produced by the prosecution are so lacking that the prosecution would obviously fail to secure a conviction if the case were to proceed to trial. He is not required to weigh the evidence as if he is himself trying the case.[12] He is not required to inquire minutely into the case for the defence, in the unlikely event that it is put forward in the inquiry. The prosecution need only adduce evidence which is "sufficient for the

[11] *Sulaiman Kadir v PP* [1976] 2 MLJ 37; *PP v Latchemy* [1967] 2 MLJ 79.
[12] Registrar's Circular No 1 of 1963; In *Re Pang Po Pah* [1985] 2 MLJ 214.

accused to be committed for trial".[13] This low standard of the prosecution's duty means that in most cases the preliminary inquiry would end with the accused being committed for trial. The high rate of committals may lead to unfair speculations that magistrates commit accused persons for trial as a matter of course.

Another criticism of preliminary inquiries is that inadmissible and irrelevant evidence sometimes finds its way into the record of proceedings. This record, though not relied upon greatly by the trial judge, is available for reference by the court. While judges would not be influenced by them, nevertheless the danger remains that evidence which is inadmissible and prejudicial to the accused is made available to the trial court.

What certainly is true in a preliminary inquiry is that the defence very rarely chooses to produce evidence at the inquiry, or even to exercise the right of cross-examining the prosecution witnesses. This can be attributed to three main reasons. Firstly, to call evidence or to cross-examine the witness for the prosecution would present the prosecution with a preview of the defence case, as well as to afford the prosecution an opportunity to cross-examine the defence witnesses. Secondly, since the decision that the magistrate has to make at the end of the defence case is the same as that at the end of the case for the prosecution, it is most unlikely that the magistrate could be swayed by the defence evidence, after he had found sufficient grounds for committal at the end of the case for the prosecution. Thirdly, it is a fact that even in the unlikely event that the magistrate accepts the evidence of the defence at that stage, at most, a discharge not amounting to an acquittal is ordered.[14] This leaves the prosecution with the liberty to prefer the same charge against the accused again, albeit before a different magistrate.

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[13]For a discussion on this standard of proof, see *Iidran v PP* [1985] 2 MLJ 408.

[14]*Mary Shim v PP* [1962] MLJ 132.

Opposition to its abolition stems largely from the following advantages of a preliminary inquiry. It is argued that the accused would be better prepared for the defence of a capital charge against him because at the end of the inquiry, the case for the prosecution would have been brought to his attention. Secondly, it is argued that a preliminary inquiry would be able to sieve inadmissible and irrelevant evidence and thus result in a more speedy trial of the case. Thirdly, it is said that this process of sieving would ensure that an accused person would not be unnecessarily burdened with the risk, anguish, expense and strain of a High Court trial for a capital offence unless there are sufficient grounds for it. There is also a chance of an early release from custody by being discharged if no case had been established against him.

A. SECTION 177A

In the absence of preliminary inquiries, transmission of cases to the High Court for trial is now through the new section 177A of the CPC. This provision was inserted by clause 8 of the amendment Act. Section 177A is reproduced as follows:

> (1) A prosecution in respect of an offence which is to be tried by the High Court in accordance with Chapter XX, shall not be instituted except by or with the consent of the Public Prosecutor:
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> Provided that a person may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but the case shall not be further prosecuted until the consent has been obtained.
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> (2) In any prosecution pursuant to subsection (1), the accused shall be produced before the Magistrate's Court which shall, after the charge has been explained to him, transmit the case to the High Court and cause the accused to appear or be brought before such Court as soon as may be practicable:

> Provided that when the accused is brought before the Magistrate's Court before the Public Prosecutor has consented to the prosecution, the charge shall be explained to him but he shall not be called upon to plead thereto.

(3) When the accused appears or is brought before the High Court in accordance with subsection (2), the High Court shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX.

This section is in fact similar to section 39B (3) and (4) of the Dangerous Drugs Act 1952. Under this section a prosecution for an offence to be tried by the High Court shall not be instituted without first having obtained the consent of the Public Prosecutor.

The question which may arise out of section 177A is whether consent of the Public Prosecutor is required for the prosecution of any offence which is to be tried by the High Court, or just for those offences which are ordinarily triable before such court, that is to say offences which are punishable by death. If the former, it would mean that whenever a case which is not ordinarily triable by the High Court is transferred to the High Court for trial by virtue of sections 177, 417 or 418A[15] of the Code, the consent of the Public Prosecutor must first be obtained. Without this consent, the proviso to subsection (1) prohibits the case from being further prosecuted.

It is submitted that section 177A does not apply to trials held at the High Court as a result of a transfer made under the above mentioned provisions. As far as a transfer under section 418A is concerned, it may be argued that the consent of the Public Prosecutor, even if required, can be implied from the issuance of the certificate by the Public Prosecutor demanding such transfer. Consent can, after all be implied from the Public Prosecutor's actions. In *Mohamed Halipah*

[15]These sections provide for the power to transfer cases by the subordinate courts, the High Court and the Public Prosecutor respectively.

v PP,[16] it was held by the High Court that the consent required for the prosecution of that offence could be implied from the presence of the DPP (who was held to be the alter ego of the Public Prosecutor) in court to prosecute.

In any case, it is submitted that, and this applies to transfers under sections 177 and 417 of the Code as well, the new section 177A was passed in tandem with the abolition of preliminary inquiries. It is therefore clear that the intention behind the provision is to allow for a procedure to transmit cases involving capital offences to the High Court, a procedure which had previously been possible through preliminary inquiries. Thus, for offences ordinarily triable before a High Court, and as such a preliminary inquiry would previously have been necessary, in for instance, the case of murder, the Public Prosecutor's consent is necessary. However where preliminary inquiries had previously not been necessary, as in a case of a transfer to the High Court under sections 177 or 417, no such consent is necessary.

Further, the explanatory statement to the amendment Bill describes the relevant clause in the Bill to be for the purpose of providing for the transmission of cases to the High Court, without holding a preliminary inquiry under Chapter XVII of the Code, to be tried by such Court.

B. THE CONSENT

Where the case is one which is ordinarily triable before the High Court, consent is required for its prosecution. The consent can be given either by the Public Prosecutor himself or by any Deputy Public Prosecutor. The Deputy Public Prosecutor is empowered to do so since he is the alter ego of the Public Prosecutor and section 376(iii) of the CPC allows the Public Prosecutor to delegate his powers to his Deputies.[17]

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[16][1982] 1 MLJ 155.

[17]*PP* v *Johnson Tan Han Seng* [1977] 2 MLJ 66 and *Ote Hee Koi v* PP [1968] 1 MLJ 148.

Cases have shown that the consent need not be in any specific form. It need not be in writing and can be given orally by the Public Prosecutor or Deputy Public Prosecutor. In *Chai Chong Yin v PP*[18] it was held that a consent under section 80 of the Internal Security Act 1960 is not required to be in writing, nor need it be in any specific terms. However, it is vital to have it in writing where the prosecution is conducted by an officer other than the Public Prosecutor himself or any of his deputies. This is because apart from proof that the consent had been given, the court will not imply such consent from the presence of such officer in court, since they cannot be regarded as the alter ego of the Public Prosecutor. This point was evident in *Lyn Hong Yap v PP*[19]. Be that as it may, in practice, standard forms are prepared for such a purpose to avoid any defects in the prosecution's case in that respect.

Even though the points and cases discussed above deal with consent required by other statutes, there is nothing to suggest that the courts would make any significant departure from these rules in relation to the consent under the new section 177A of the CPC.

Another matter to be considered in relation to this new section is that the accused may be arrested, remanded in custody and brought before the magistrate's court for the charge to be read and explained to him, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained. However, the case is prohibited from further prosecution until the consent is obtained.

In *Oladotun Lukmaru v PP*, [20] the accused persons had been charged with the offence of trafficking in dangerous drugs, an offence under section 39B of the Dangerous Drugs Act 1952. (As indicated earlier, sections 39B (3) and (4) of the Act are similar to section 177A.) The Public Prosecutor's consent had not yet been obtained when the

[18][1983] 1 MLJ 267.
[19][1956] MLJ 226.
[20][1991] 1 MLJ 187

accused persons were produced before the magistrate's court. The magistrate however proceeded to transfer the case to the High Court for trial. It was held by the High Court that the action of the magistrate amounted to a further step in the prosecution of the case and that therefore the consent of the Public Prosecutor was necessary before the case could be transferred. In such instance, therefore, the procedure to be followed should have been that as laid down in the case of *Illamaran v PP*.[21] In that case it was held, *inter alia*, that subject to the rules regarding bail, the accused should be remanded in custody until such consent is obtained. Since a case which comes within the scope intended by section 177A is one which is punishable with death, no bail is likely to be granted. The accused person would most probably be held in custody until the commencement of his trial at the High Court.

III. TRIALS WITH THE AID OF ASSESSORS

Clause 11 of the amendment Act abolishes trials with the aid of assessors. This procedure, provided for under Chapter XXI of the CPC, applied to cases in Sabah and Sarawak which were punishable with death. However, for the offence mentioned under section 3(2) of the Kidnapping Act 1961, this procedure applied to the whole of Malaysia. Consequential upon this abolition, the relevant sections in the Kidnapping Act were amended. The accused in the above-mentioned cases would now be tried according to the procedure under Chapter XX of the Code.

The main differences between trials with the aid of assessors and trials before a judge sitting alone under Chapter XX of the CPC can be briefly set out as follows. In the former, the trial judge would be assisted by two assessors, one of whom, as far as it was practicable, should be of the same race as the accused person. The role of the assessors was most significant at the end of the case for the defence. In

[21][1992] 1 MLJ 672.

Fong Ah Tong v PP,[22] Laville J held that assessors ware mere aiders of the court whose opinions assisted the court in deciding questions of facts. Under section 197 of the Code, the court should, at the conclusion of the case for the defence, ascertain from each of the assessors his opinion on such particular issues of fact relevant to the charge as the court might specify. The court was however not bound by the opinions of the assessors. In *Liew Koh Tai v PP*,[23] the trial judge had found the accused person guilty, contrary to the opinion of the assessors. It was held that the judge was entitled to do so. In *Lorensus Tukan v PP*[24] it was held that where the judge disagreed with the opinions of the assessors, he must record his reasons for doing so.

Section 199 provided a further safeguard where the accused was convicted by the court contrary to the opinions of the assessors. The judge was required to forward the record of the proceedings to the then Supreme Court. The case would then be treated as an appeal lodged by the person convicted whether or not he had given notice of appeal.

The main criticism against the abolition of this procedure is that the court would lose valuable guidance in matters of facts which are outside the experience of the court. The assessors were meant to guide the court on questions of facts where the peculiar culture and race of the persons accused are unfamiliar to the court. This explains the requirement that at least one of the assessors should, as far as practicable be of the same race as the accused. It is submitted that although this may be true a decade or so ago, it carries less weight at present. This is due to the fact that the judges are no longer as ignorant of the local customs, traditions and practices in Sabah and Sarawak as they were before. Where expatriate judges were previously common, the judiciary and the Bar now consist of locals who are familiar and well-acquainted with the local culture.

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[22][1940] MLJ 190. See, however, the case of *Annuar bin Ali v PP* [1948] MLJ 38.

[23][1965] 1 MLJ 54.

[24][1988] 1 MLJ 251

Apart from the above, the assessors played a very insignificant role in the actual trial process. The assessors, unlike the jury, played a very limited part in the decision-making process of the case. The stage where their role was of any significance was at the end of the trial. It had been shown earlier that though their opinions were asked for at the end of the trial, they did not bind the court.

The extra cost and potential delays arising out of the absence of assessors, which could lead to retrials,[25] were also reasons for doing away with this trial procedure.

For all the above reasons the legislature had rightly chosen to replace this trial procedure with that of a judge sitting alone under Chapter XX of the Code.

IV. TRIALS BY JURY.

The deletion of Chapter XXII of the CPC abolished trials by jury in Malaysia. This procedure applied to all states in West Malaysia in all cases where the punishment of death is authorised by law, for instance, murder. The exceptions to this general rule include security offences and the trafficking of dangerous drugs under the Dangerous Drugs Act 1952.

Trials by jury are now replaced with trials by a judge sitting alone under Chapter XX of the Code. The parliamentary debate preceding this abolition suggests that the proposal was put forward by the Minister of Law for reasons that may be briefly described as follows.

1) that jury trials are out-dated;
2) that jurors were reluctant to answer to jury duty mainly on the grounds that they were unwilling to participate or have a hand in the sentencing of a fellow man to death;
3) that the costs incurred in providing subsistence for these jurors were too high; and
4) that the procedure was open to abuse by expert defence lawyers who were capable of distracting the jurors from the reality of the prosecution evidence.

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[25]S188 CPC.

While it is conceded that jury trials do have its disadvantages, it is widely claimed that the abolition should have been made only after thorough discussions with all the parties involved in the realm of criminal justice. The views of the Bar Council, members of the Judiciary and the academia would have provided a more balanced approach to this all-important development. Apart from a couple of write-ups by the local press, there were no significant moves to inform the public of the impending fate that was to befall their criminal justice system. The standard response by proponents of this change was that the government could not be expected to hear everyone involved whenever a change is made, otherwise there could be no change at all.

With no significant public discussion or opinion gathered on the subject, one must necessarily presume that the legislature was aware of some of the accepted pros and cons of jury trials. Some of the accepted perils of this procedure are:

1) jury trials are too cumbersome and cause much delays. This is mainly due to the nature of the jury selection process as well as the procedure applicable should any member of the jury become incapable of attending the trials; [26]

2) the jury is often overawed by the whole legal process and the enormity of their tasks so as to prevent them from giving the appropriate attention to their duties; [27]

3) the jury is not capable of understanding the mechanics of the legal process and not sufficiently competent to understand complex issues which may arise in the trials;

4) the jury may be influenced in their decision-making process by too many 'non-legal' issues, for instance by putting undue significance on the status of the offender, the nature of the

[26]See s 211 Criminal Procedure Code
[27]See *Yap Stong v PP* [1983] 1 MLJ 415.

crime or the state of the victim's suffering. Too much media attention to a particular case may also have an effect on the jury;[28] and

5) jurors are susceptible to being influenced or exploited by the judge or lawyers.[29]

The procedure is nevertheless accepted as the 'light that shows that freedom lives'[30] and the following merits of the procedure are well established:

1) that the jury is the best finder of facts. Questions of facts are best decided after thorough discussions and analysis, especially amongst a group of people most likely to be familiar or have some acquaintance with those questions;[31]

2) that the accused is being tried by a group of persons that is in some way representative of the community.[32] This communion of peers is less pure in the Malaysian context. This is due to the fact that jurors are required to be conversant in the English language [33] and consist mostly of civil servants. An illiterate fisherman from the village is not therefore being judged by his own peers;

3) that the jury comes fresh to each trial. It is a wholly new experience for each juror who would, as, most reasonable persons, tread the new territory with the utmost care and circumspection, wary of any mistakes that could result due to this inexperience. "Case-hardening" therefore is not a problem for them;[34] and

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[28]See *Murphy v PP* [1985] 4 NSWLR 42

[29]Bankoski A, "The Jury and Reality" in Findlay M and Duff P (eds) *The Jury under Attack*, Butterworths, London, 10.

[30]Devlin, *Trial By Jury*, (1956) Stevens and Sons, London, (1956) at 164.

[31]Findlay M, *"The Role of the Jury in a Fair Trial"* in Findlay and Duff *supra* n 29 at 163.

[32]Freeman M, "The Jury On Trial" (1981) 34 *Current Legal Problems* 90.

[33]See ss 207(f) and 237(r) of the Code.

4) that jury trials afford the public a sort of opportunity to educate themselves in the very integral function of the country, that of the administration of criminal justice. This sort of education is unattainable in any other way.[35]

Trial by jury, without doubt is the mainstay of most justice systems. When it is abolished without much discussion and the gathering of opinion, be it from the public or from those directly involved in the justice process, one cannot but be dismayed. The mere fact that it had been there for a long time and is therefore outdated is totally unacceptable. A more thorough study should have been made to convince the parties involved as to the need for its abolition.

V. OTHER AMENDMENTS

The Penal Code (Amendment) Act 1993 introduced the mandatory sentence of whipping for offences under sections 403, 404, 406, 407, 408, 409 and 420. These are offences relating to criminal misappropriation, criminal breach of trust and cheating.

Clause 22 of the Criminal Procedure (Amendment) Act amended section 288 of the Code to provide that for these offences, whipping should be inflicted with a light cane similar to the one used for youthful offenders.

The mandatory sentence of whipping for these offences is a result of intense government action to deal with the increasing rate of white collar crimes. Fines obviously did not have the desired effect of checking this particular group of criminals. It was observed in *New Tuck Shen v PP*[36] that:

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[34]See Greer S and White A, *Abolishing the Diplock Courts*, The Cabden Trust, London, (1986) at 22-23.

[35]Willmore G, *Is trial by jury worth keeping?* 3rd Edn at 38-39.

[36][1982] 1 MLJ 27 at 31.

> fines will not deter the rich and wealthy from committing corruption (or similar offences) if they get the impression that the same riches that they use to perpetrate the offence can buy them out of the courthouse.

This mandatory sentence also represents a significant change in sentencing practices in the Malaysian criminal justice system. The accepted and established principle has always been that whipping is reserved for offences where violence had been used. Indeed it was also imposed where violence was not actually used, but was threatened on the victim. The courts had also been prepared to impose whipping where previous cases had shown that violence had been commonly used for that type of offence even though it had not been proved in the instant case before the court.

Whipping is normally seen as a punishment imposed to inflict pain on the offender. Its purpose may be seen as retributive in nature as a result of the violence used or threatened. However, in respect of the amendments, infliction of pain is obviously not the intention to impose whipping. The provision that a light cane be used is testamentary to this.

The purpose, as indicated by the Minister, is to humiliate the offender in the eyes of the public. Obviously it is thought that being whipped is a gravely humiliating experience, and the hope is that it is sufficient to deter the prisoner or other would-be white collar criminals.

It must be remembered that to effectively achieve this aim, other offences having similar elements of abuse of trust provided for under other laws must also be punished with whipping. In this way, white-collar criminals charged for such offence will not be seen as receiving "preferential treatment" if the prosecution were to exercise its discretion to charge them for, say, offences under the Banking and Financial Institutions Act 1989, instead of the Penal Code.

VI. CONCLUSION

The amendments to the Criminal Procedure Code have brought about several desirable changes to the criminal justice system in Malaysia. The abolition of preliminary

inquiries, trials with the aid of assessors and the imposition of whipping for abuse of trust offences are, in the opinion of the writer plausible; however, the manner in which the move to abolish jury trials was rushed through has left a blemish on what would otherwise have been an acceptable exercise.

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