

The Crisis of Low Conviction rate in Sri Lankan Criminal Justice System, A Critical Analysis of the Root-causes

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Abstract — *The function of the “Criminal Justice System” is to deliver justice for all, by prosecuting suspects before the competent courts based on evidence and convicting them if they proved to be guilty while protecting the innocent. Generally the “conviction rate” which is the percentage ratio of number of convictions out of the number of criminal cases brought within a particular jurisdiction in specific time period would show the degree of efficiency and effectiveness of that criminal justice system.*

Throughout the last few years Sri Lanka has been experiencing very low criminal conviction rate which ranging from 4% to 6%. Does it mean that majority of suspects are innocent? Meanwhile the crime rate of the country is relatively high. This situation has endangered the social life of the general public, adversely affect to the national economy and ultimately tarnish the good will of the country.

As a common law country Sri Lanka has been implementing the “Adversarial method” of litigation which gives priority to the procedure than finding the truth. A neutral judge has taken a decision by considering the submissions of conflicting parties. The accused is presumed to be innocent until proven guilty with proof of beyond the reasonable doubt. In Sri Lanka, Attorney general, Police or other competent government officials conduct the prosecution while under the “Inquisitorial method” judge prosecute the accused in trial with the view of conviction. So under the common law tradition prosecution has to undergo with tedious task to convict the accused.

Initially this paper elaborates the gravity of the problem while attempting to find where the root causes exist in the criminal justice system. Then it discusses some of the critical issues which may arise in establishing the case in a court from the perspective of the prosecutor under three categories; investigation, prosecution, and legal procedural factors.

This research would base on secondary sources including reference of statutes, text books, electronic data bases, journals etc. In order to ensure that the situation in Sri Lanka is understood in the light of the international developments in this regard, further this study engages with selected jurisdictions such as India, USA, Japan and UK.

Keywords: Conviction rate, Criminal justice system, Root causes.

I. INTRODUCTION

As a common law country Sri Lanka exercises Adversarial method of litigation where the prosecutor is at the center stage of a criminal trial and plays a leading role while the Judge switches in to more neutral mode compare to the Inquisitorial method. Our criminal justice system mainly based on Criminal Procedure code of 1979, Judicature act 1978, Police ordinance, Bail act of 1997 and relevant substantive laws including Penal Code. Though, it reveals with the research that the problem of low conviction rate arises due to procedural facts rather than the shortage of substantive law.

The rapid escalation of crime, increasingly committed in an organised manner with violence, impunity and considerable sophistication, thereby resulting in the loss of public confidence in the criminal justice system, has highlighted the need to review the existing criminal justice framework in Sri Lanka. By analysing the grave crime abstracts of year 2007 to 2012, it would create a vivid image over the gravity of this problem.

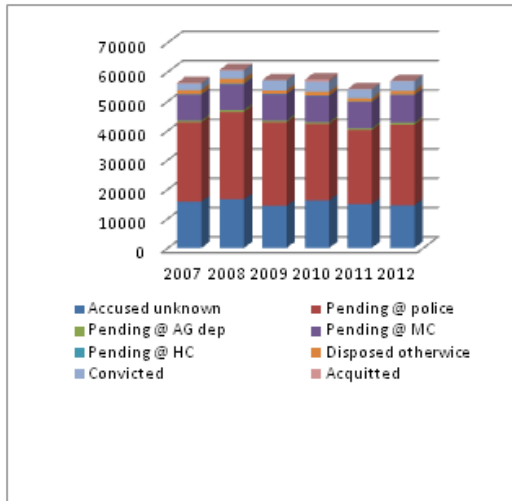


Figure 1. Grave crime abstracts of year 2007 to 2012

It is noteworthy that the present conviction rate of the country stands at a mere 4% to 6%. This trend is inextricably linked to laws delays and highlights the urgent need to rethink procedural mechanisms to assist the efficacious dispensation of justice. For instance the official crime disposal records of year 2012 as follows.

Table 1. Disposal of grave crime abstract of the 2012 (as per SL police gazette No-1821)

Cases Reported		57162
Mistake of law fact	170	
False complaint	43	(213)
Total true cases		56949
Plaint field	14280	
Accused unknown	14556	
Otherwise disposed	1290	
Ending in conviction	3331	
Discharge or acquitted	<u>112</u>	
Total Disposed		19289
Investigation pending	27487	
Pending in MC	9418	
Pending with AG	626	
Pending DC/HC	<u>129</u>	
Total pending		37660

Following pie-charts may give more elaborative view of the above given figures.

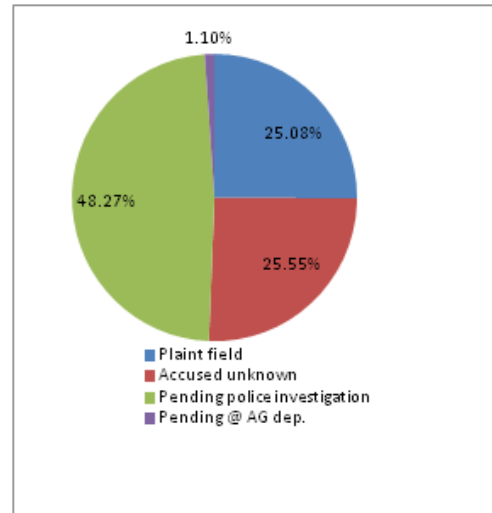


Figure 2. Analysis of the total true cases in 2012

Only 25.08% were field out of the true cases. But 48.27% of true cases still the under investigation and 25.55% of cases accused unknown. Relatively very few cases (1.1%) were held with Attorney General (AG) Department. So the majority of the cases prevails under the police investigation and the unavailability of the suspects or accuses is also due to the short comings of investigators. It is required further analysis of field cases to examine the roots of the matter.

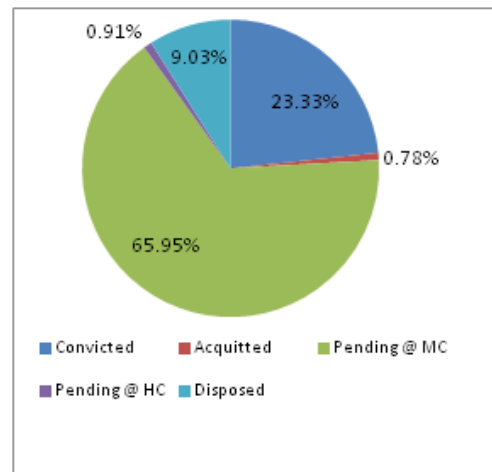


Figure 3. Analysis of the field cases

Such analysis reveals that 23.33% were convicted out of field cases, but it is only 5.85% of true cases. According to the definition of conviction rate, it is 23.33%. Further it reveals that 65.96% cases were pending in magistrate courts and 0.9% cases were pending in high courts. The most significant fact is that only 112 people were acquitted or discharge

after the judicial proceedings which amounts just 0.78% of total field cases. 9.03% cases were disposed after file the case due to various reasons. Even though Sri Lanka experiencing low conviction rate, significantly low acquittal rate reported. So it is clear that our substantive and procedural criminal law does not allow perpetrators to go unpunished. But it seems that there is a critical issue with time consumption on the litigation, Infrastructure and the coordination among the prosecutor, victim and witnesses.

The conviction rate in England and Wales was 90.6% in 2009-2010; 90.2% in 2010-2011 and 90.3% in 2011-2012. It may, however, be added that the newly created Crown Prosecution Service has the power to withdraw a case from prosecution under certain circumstances. Further, about 85 percent defendants pleaded guilty. (Ministry of Justice Statistics-UK)

According to National Crime Records Bureau India, in the past four decades, the rate of conviction in crimes committed under Indian Penal Code (IPC) has dropped miserably. From 62.7% in 1972, conviction rate in IPC crimes has dropped to 38.5% in 2012.

The conviction rate in Japan is extremely high. In District Courts, it was 99.91% in 2010; 99.92% in 2011 and 99.94% in 2012 in cases wherein the defendant had pleaded guilty. In cases wherein the defendant had not pleaded guilty, the overall conviction rate was 97.73%. (Ministry of Justice, Government of Japan)

For 2011, the US Department of Justice reported a 93% conviction rate. The conviction rate is also high in U.S. state courts. "Coughlan" writes, "In recent years, the conviction rate has averaged approximately 84% in Texas, 82% in California, 72% in New York, 67% in North Carolina, and 59% in Florida.

II. ROOT CAUSES

The right to a speedy trial is a fundamental human right. It has been affirmed in the Universal Declaration of Human Rights 1948 and enshrined in the constitutions and statutes of some countries. Speedy trial is a vital element in the administration of criminal justice as well. In fact, unnecessary delay in the trial constitutes a denial of justice. The prevention and control of crime as

well as the effective rehabilitation of the convict are enhanced by speedy trial. Conviction rate is a reasonably good indicator of the efficiency and efficacy of the criminal justice system prevailing in a country. Of course, there is a limitation to the significance of the conviction rate as an indicator of prosecutorial efficacy. Distinctive conviction rates are caused by the differences in the evidential standard required at the initiation of prosecution, more fundamentally the differences in the role of investigators and prosecutors to refer cases to the court. In countries where a considerably low evidential standard is required to send a case to court, it should be tasked to pass judgments of conviction or non-conviction based on such prosecution, the conviction rate is systematically lower than the countries requiring a higher evidentiary standard. A high conviction rate, however, is not the primary objective of the criminal justice system. Notwithstanding the aforesaid, a high conviction rate may be indicative of methodical and painstaking investigations and effective prosecution. On the contrary, an excessively low conviction rate definitely indicates unsuccessful and ineffective prosecution. It should be made clear, however, that it is not the mandate of the prosecutor to secure conviction at any cost. He is required to be fair, impartial and must present all the facts, including facts and circumstances favorable to the offender, before the court for an appropriate decision. This is the general practice in most common law countries, where the prosecutor does not have the authority to withhold a case from prosecution.

II. INVESTIGATION-RELATED ISSUES

The investigating agencies are required to collect all available evidence during investigations. If painstaking and timely investigations are not conducted, valuable evidence maybe lost. Sometimes the police fail to collect vital evidence from the site such as blood stains, fingerprints and other evidence in cases of physical violence, due either to lack of training or inefficiency. At times, the statements of key witnesses are not recorded as their importance in proving the case is not understood. Statements may also be recorded in a casual and slipshod manner by the investigating officer which leaves gaps in the evidence. Occasionally, the police fail to work in collaboration with forensic experts. As a result, forensic evidence is not collected for use against the offender. The police may send cases to the

court even when the evidence is insufficient for reasons of expediency. The significant role played by the Police Force in the administration of criminal justice makes it an integral component of any strategy aimed at curbing crime. Therefore it is important that the Police Force be geared to perform at its maximum potential.

It is noted that 42.6% of all recorded crimes are committed with the Western Province, which although containing almost one third of the total number of Police Stations in the island, is manned by a mere 14% of its total strength. Compounding matters further, the development of personnel for special assignments such as Parliamentary duty, VIP Security etc, is observed to up a considerable percentage of the aforementioned limited human resources available within the Western Province.

Better performance goes hand in hand with the need to provide new resources, tools and technology to the Police. However, the primitive nature of investigative techniques presently used by the Police i.e. outdated fingerprinting technology and the lack of rudimentary investigative equipment such as Polygraph machines (lie detectors) in Sri Lanka, highlight the urgent need to invest in equipment relating to IT and forensics.

The lack of motivation within the police force is seen to stem from stagnation in service with limited prospects of promotion and the imbalance of ranks within the Force. The failure on the part of the administrative hierarchy within the Police Force to adequately acknowledge and appreciate the investigative skills of its officers, especially in the context of granting promotions.

The lack of effective training, commitment and leadership within the Police Force wields a significantly negative impact on the quality of investigations carried out by the Police.

It is submitted that the forensic science has the potential to enhance the efficiency of the Police. The advent of DNA and related technology including the development of new methodology has today introduced the possibility for improving the strategic use of forensic science in the realm of criminal investigations.

III. PROSECUTION-RELATED ISSUES

In Sri Lanka, the prosecutor has absolute authority to determine whether a case should be sent for trial or not, and he alone determines if the evidence is sufficient. In some countries, the case file is sent to the prosecutor for screening at the pre-trial stage, even though he does not make the final decision. Sometimes, the prosecutor does not conduct proper screening due to heavy work load or other extraneous factors. In Sri Lanka, the police send the case file to the Attorney General's Office for advice. Scrutiny may take a long time, and it may be too late for the State Counsel to make any meaningful suggestion to the police, to improve the quality of investigations. Hence, relatively weak cases are sent to court.

To conduct a trial is one of the most important functions of the prosecutor. It is observed that sometimes the prosecutors are not prepared for the trial and fail to examine the witnesses in a professional manner. As a result, court time is wasted. Due to delayed trials, some witnesses may die, suffer from memory loss, or lose all interest in prosecution.

Some defense counsels apply for adjournments on flimsy grounds further contributing to unnecessary delay in trials. The prosecutor should oppose such applications. The witnesses are often reluctant to testify due to fear of reprisals or because they are compromised themselves with the defendant. Victims may not cooperate with the prosecution and sometimes retract their previous statements. The police is required to secure the presence of witnesses when they are needed in court. Generally, the prosecutor also ensures the execution of court orders through the police agency. Any lack of cooperation may result in inefficient prosecution and delayed trial.

IV. PROCEDURAL-RELATED ISSUES

Apart from the problems enumerated above, there are some problems which are inherent with the legal structures and systems prevailing in Sri Lanka.

Confessions made before police officers are not admissible in evidence irrespective of the rank of the officer. Due to this legal disability, valuable evidence against the defendant is lost. Under the sec 110 of CPC, the suspect is legally bound to give his fingerprints, handwritings or blood samples,

etc., either during investigation or the trial. But if the investigation officials are not equipped with latest technology and knowledge, valuable forensic evidence is thus precluded, which makes the prosecution's task all the more difficult.

As found out by the Committee appointed to recommend amendments to the practice and procedure in investigations and courts, the failure of Judicial Officers to pay adequate attention to Section 420 (1) of the Criminal Procedure Court Act No. 15 of 1979 ("CPC"), as amended by Act No. 11 of 1988, which provides for the elimination of unnecessary evidence give effect to unnecessary delay. Non-Summary Inquiries ("NSI") should be dispensed with, having regard to several concerns voiced by representatives of the Police and the Judiciary including members of the Official and Unofficial Bar. A long drawn NSI is often seen to negatively impact on the case, resulting in the demotivation of witnesses due to the inconvenience involved in making regular attendance for the purpose of such inquiry.

V. RECOMMENDATIONS

The Judicature Act No. 2 of 1978 together with Section 145 of the CPC should be amended in order to afford the Attorney General discretion to file direct indictment in appropriate cases at any time. (In particular having regard to the general trend where indictments are filed in almost 95% of all cases committed by the Magistrate).

Magistrates should be encouraged to institute legal proceedings in homicide cases immediately after the conclusion of the inquest if the available and proceed with the NSI while investigations are pending.

While there is adequate provision in the present law to adopt this course of action, most Magistrates fail to follow this procedure thereby contributing to the delay. Therefore it is recommended that the JSC be requested to advise Judicial Officers in this regard. Magistrates should be authorised to record statements on oath of any person acquainted with the facts relating to the incident, which may be subsequently read at the commencement of the NSI and in the presence of the accused. The accused would then be entitled to cross examine the witness.

This procedure would enable the production of depositions in the subsequent trial under Section

33 of the Evidence Ordinance and thereby prevent the prosecution being placed at a disadvantage in the event of the subsequent death of such witness. Judicial Medical Officers (JMO) should be required to provide the Post-Mortem Report and all Medico-Legal Reports within one month of the incident, except in instances when permission has been granted by the relevant Magistrate.

The proviso to Section 148 (1) of the CPC should be amended prohibiting the recording of oral evidence of all public officers (including Police Officers) unless directed to do so by the Attorney General. Instead legal provision must be made to enable the acceptance of official affidavits provided by such witnesses, when so required.

The incorporation of a mandatory legal provision requiring Magistrates to visit Police Station at least once a month for the purpose of ensure the detention and interrogation of suspects according to law. It is also suggested that provision be introduced to empower Magistrates to visit Police Stations at any time, in order to inspect and/or monitor the lawful detention and interrogation of suspects.

It is further recommended that in all High Court cases, defence lawyers be permitted, upon application to the Officer-in-Charge ("OIC") of the relevant Police Station, to be granted access (in the form of certified photocopies) to all statements recorded in the course of the investigations including the statements made by unlisted witnesses together with all notes of investigation. It is noted that this would significantly enhance the purity of the investigations carried out by the Police

VI. CONCLUSION

The existent delays in the criminal justice process greatly frustrate the law enforcement effort, resulting in the development of a sense of injustice note merely within the victim of crime but also within the offender and citizen of the country alike. The end result is the overall loss of confidence in the criminal justice system of the country. Witnesses who are reluctant to depose in court for fear of reprisals need protection from the state. In the USA, there are legal provisions for the protection of witnesses, which also permit a change of their identity, their relocation and financial support until such time that they become

self-reliant. This program has yielded good results in that several gangsters have been convicted on the basis of the testimony of such protected witnesses.

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BIOGRAPHY OF AUTHOR



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