

# CHALLENGES TOWARDS AN OPTIMUM IN SCIENTIFIC SCRUTINY OF FORENSIC INVESTIGATIONS IN SRI LANKA.

**Induwara Goonerathne**

*Department of Forensic Medicine, Faculty of Medicine, University of Peradeniya*

When contemplating the nature and focus of forensic investigations, one would envision them to be a utopia. In empirical contexts unfortunately, it is unreasonable to envisage such forensic investigations to be a place for ideal perfections. The reasons for forensic investigations to be pragmatically imperfect are multifold. Logistics, financial constraints, lack of training, inadequate political and personal motivation, issues of infra structure, equipment, rampant nature of case load, unavailability of experts, issues related to crime investigations and officers, issue related to legal profession and courts, professional and personal biases, leadership issues, confounders, prejudices are only a few to enumerate in relation to our local situation.

The aim of this essay is to critically evaluate the forensic investigations in Sri Lanka with a view to identify challenges and pertinent issues that hinder and impede the quality and scientific optimism. The conceit behind the criticism and arguments postulated are not by any means to undermine the existing system based on a western training, idealism and hypocrisy but towards improving the system towards “near perfectionism” accepting the realities weaknesses and challenges. Therefore, the critiques expounded here needs articulation “as constructive” and with some degree of optimism.

The forensic investigations in view of this article include medico legal investigations and other capacious scientific investigations conducted for forensic purposes. Although Scientific optimism logically requires a premise of perfectionism, in reality, it is unfeasible, therefore envisaged a “near perfect” or rather acceptable scientific disposition in the conduct of forensic inquiry. The setting for the thesis developed here and for main arguments stem from prospective cross sectional observations made by the author in two different settings, one in Sri Lanka and the other from reputed western settings. Additionally, the personal experience and formal education and tutelage in forensics both in Sri Lanka and in reputed western schools are incorporated to reinforce the fabric and geography of the arguments and assertions. In essence this paper glances the local forensic set up from a comparative perspective in contrast to western

models having regard to scientific optimism. Nonetheless there is no assertion made to the effect that the western practice is ideal, either.

The challenges identified in the context of reaching a scientific optimism in forensic investigations in Sri Lanka are categorized broadly in to four categories: structural issues, policy issues, issues related to main disciplines in forensic sciences, and personal or professional issues. It must be noted that one issue discussed here can overlap with another or with several others factors.

The scientific aspect of forensic investigation is structured in Sri Lanka in a special way. The most prominent science in the field of forensic science unarguably is the forensic pathology service. There are specialist forensic pathology units in most hospitals in Sri Lanka and in medical schools led by a specialist in forensic pathology commonly known as a Specialist JMO (judicial medical officer). These units compose of several other non specialist medical officers too who perform medico legal functions in addition to the specialist. Further, the District medical officer, Hospital Directors, Medical Officer Medico-Legal, Medical Officer In Charge of peripheral hospitals, who have neither specialist nor additional training in forensic pathology nor in handling medico- legal issues are compelled to perform medico-legal functions merely because of the structural legal and administrative reasons. The Sri Lankan law strongly asserts that any medical officer with no further training or specialty could handle a medico legal case of any degree of seriousness appropriately. This has become one major issue and raises concerns on justice, due process and quality issues. These non specialist positions that has responsibility to perform medico-legal duties can be the first appointment held by some medical officers. Some foreign qualified non specialist medical officers have had no subject of forensic medicine in their medical curriculum and enter local practice passed through qualifying examination for registration. There has been a significant cut down of forensic medicine teaching in the local medical curriculum as well, at present. The non specialist medical officers have to perform other clinical and administrative duties on top of their medico-legal duties. This situation makes the

quality and scientific standards of forensic inquiry questionable. The need for such a trend requiring non specialist medical officers to perform medico-legal functions arose when there was scarcity of specialists in forensic pathology. It is high time that measures be taken to increase the cadres of specialists' position depending on the national demand. Alternatively it may be pertinent to further train those non specialist medical officers who are required to perform medico-legal functions to an acceptable level so that quality and scientific optimism in forensic investigations can be guaranteed.

The other concern is the enormous workload of the JMO's office. It is difficult for any officer to maintain quality and standards when there is an over load of work. One aspect to this issue is that there is no screening process of the work load that the specialist JMO receives. If there was an established screening process, the specialist could utilize his time on specialized cases. The other aspect of this is the forensic pathologist is obliged and has to perform all most all aspects of forensic investigations most of the time due to unavailability of other "non-pathology" specialists. For example, a forensic pathologist is requested to perform broader areas of forensic anthropology, psychiatry, odontology, entomology (which are all separate disciplines on their own merit), scene visits, participate in exhumations etc on top of his main function as a forensic pathologist. It is timely that other specialties such as forensic anthropology forensic odontology forensic psychiatry forensic psychology, forensic archeology, forensic science are developed. Establishing the disciplines and recognition of specialists and appreciating their role in our country is important so that the work load of the forensic pathologist is reduced, quality of the investigation improved and there is invariably a team approach to the problem.

In contrast to the western model, a Judicial Medical officer in Sri Lanka manages both clinical forensic cases as well as post mortems. It is important to survey and review as to whether it is worth while to consider having a similar model in Sri Lanka as in other western states where forensic pathologist only sees post mortem cases and a separate specialty/subspecialty is developed for clinical cases. This may raise some tension among some practitioners with a conservative attitude and a traditional view, however it is important to study the feasibility of this model as to whether it will reduce workload of the practitioner, improve quality of the investigation and scientific scrutiny.

On the other hand there are cultural requirements to release bodies to relatives. In the name of justice, it has to be observed that "justice hurried – justice denied". However, there are unwarranted influence by local politicians and powerful personnel to release bodies in which the coroner and the JMO would be in a difficult position.

The position of the Inquirer into Sudden death, its recruitment, qualifications and training have been queried and critiqued in the past. There is no formal training, a continuous professional development nor a quality method of recruitment to this important position. It is important to review the entire medico-legal management structure if quality, truth and scientific optimism is an aim.

The other structural issue that exists is in relation to the forensic science service in Sri Lanka. By law, Government Analyst department is accepted as the sole authority on forensic science. For example, for forensic toxicology, even a university specialist unit in forensic toxicology is not recognized as having competence and authority similar to the government analyst department. This structural issue paved the way to the resignation of the only doctorate we had so far in forensic toxicology in Sri Lanka to move to UK and lead one of the top forensic toxicologist unit in the UK which was based in a University!. So was true for the forensic entomology specialist we had in the country. Both these structural and policy issues tend to inundate the government analyst department with toxicological samples from all over the country for many years. The court cases get postponed and the post mortem reports get delayed in the absence of toxicological report, specimens deteriorate and analysis fails. At times accused is acquitted in the absence of the report for a long time. It is high time to decentralize forensic science service in the country and make experts autonomous responsible and accountable following the western model. It is also important to develop private and/or university units with qualified staff to have a check and balance on the state institutes.

By law and policy the only finger print expert recognized for reporting in Sri Lanka is the police officer who is responsible for fingerprint analysis in the department of police. This undoubtedly retards the birth of parallel experts in other institutes and research in this important discipline.

Due to policy constraints explained above in the area of toxicology and fingerprints, it is highly unlikely that a defense teams in these areas be

created. The role of the prosecution is to present an honest case in fairness to the accused and the victims in order to elucidate the “truth”. Neither the judge, nor the jury nor the lawyers nor the expert witnesses were present at the time of the event. The entire process of adjudication is evolved to estimate the “truth” using the evidence presented. It is clear with the policy constraints explained above, the fairness to the accused is obliterated. He cannot have a defense toxicologist, or any other defense scientist nor he has opportunity to let his expert, witness the entire process of forensic analysis. This raises a serious concern about access to justice and due process. The court on the other hand apparently builds an overly estimated “trust” on the expert witness and “mistrust” on the ordinary witness and the accused. There are some expert witnesses who make statements and assertions of evidence as if they were eye witnesses to the case!

Issues related to forensic disciplines are multifold. Forensic investigation in any given state is a team approach. However, due to numerous reasons the situation in Sri Lanka does not seem to welcome a team approach. The responsibility of a crime investigation lies upon the police department. The officers in the police department require rigorous training in theory and practice of crime investigations. Unfortunately the police department in Sri Lanka lacks the required expertise skills and facilities to conduct a ‘state of the art’ crime investigation. The officers need further training and facilities in this regard. This issue is more deepened as it comes to rural/peripheral units. The trained officers in crime scene investigations are transferred to various ‘other’ non-crime units in the police department and the training obtained /provided appear useless. I have engaged in training police officers especially in the areas of DNA, human identifications and criminal justice, unfortunately most of them do not perform crime investigations any more. On the other hand, the police department appears to rely much on the judicial medical officer, misleadingly assuming either that the medical officer is part of the investigating team or that the medical officer has a training and expertise in crime investigations in addition to their specialized skills in forensic pathology and medicine. It is neither the responsibility of the medical officer concerned nor his expertise to conduct the crime investigation. The police department ought not to presume to delegate their own obligation in the absence of required knowledge and skills in criminal justice on their own part.

Similar to any other profession, the forensic practitioners in Sri Lanka too have demonstrated a dramatic decline in their ethical conduct, attitude and moral outrage. There have been instances of abuse of power, sexual allegations, assault incidents and alleged corruption charges against forensic practitioners. JMOs are affiliated to hospitals in Sri Lanka. With the close working relations with the other medical practitioners in the hospital, it is contended that the judicial medical officers have been reluctant to report on identified medical negligence issues, of course due to political social and other reasons.

There is an urgent need for supplying of required equipment and consumables that are essential for forensic investigations and their maintenance. The state has to have a political will to investigate crimes in the best possible way. There has to be a supply of an adequate annual budget for this purpose. For example In my own field of specialty, Sri Lanka still does not have a DNA sequencing machine for routine use, or there is no policy on paying the test costs for DNA tests. Further, we do not have a portable forensic odontology state of the art unit to be used for forensic identification purposes anywhere in the country. Also there are many lapses in terms of equipment, quality methods and consumables for forensic pathology service, toxicology and for police crime scene divisions.

One of the other important aspects that is missing in Sri Lanka in regard to forensic service is a research base. The forensic research conducted in our country is minimal and most publications are in form of case reports. Among the many Sri Lankan case reports published, it is impossible to find a new contribution other than the fact that the case was rare but found in Sri Lanka. Most of such cases have already been published by others in the international literature. Publishing a case which has already been published by another person with similar contexts, is not justified unless there is substantial new knowledge provided. The forensic domain in Sri Lanka need to have a quality research base and utilize the research findings in court room work as well as for teaching purses. On other hindrance of this is the inaccessibility to scientific literature from Sri Lanka. The state has to provide funding to practitioners to access literature to through more light to their analysis and opinion.

It is high time that Sri Lanka establishes other disciplines of forensic specially such as forensic anthropology, forensic odontology, DNA science, forensic archeology, forensic psychiatry, forensic psychology, cyber crime management, lie

detections, entomology etc. With these new fields and expertise emerging can provide a state of the art forensic service to the country. There has to be a quality management of the experts, laboratories and services they provide. Those experts need to be trained, duly recognized and provide suitable facilities and a peaceful environment to provide their service functions.

One other important concern is the assertion of inadequate attention and regard by the courts on forensic evidence. The judges, and the lawyers tend to give less probative value to forensic evidence due to their inadequacy to comprehend the scientific explanation and position. Many a times either very trivial or no questions are asked from the expert witness in court. Further, lack of a strong defense forensic teams or defense teams in Sri Lanka tend to mask the opportunity an accused will have to defend himself against the entire state power utilized to prosecute him.

It will be a suitable idea to facilitate private institutes such as Gene tech to engage in forensic investigations. Such private institutions of forensic science, toxicology or pathology would be able to either provide a defense opinion or provide an independent opinion. However, there has to be an independent committee to supervise the quality of both government and private forensic service personnel and institutes.

It is apparent that many criminal charges fail and accused often get acquitted in Sri Lanka. The degree of quality of crime investigations and forensic investigations contribute significantly for the failure rates of convictions. Giving due emphasis to the voids identified above, I am sure we can also have an unbiased state of the art forensic service in Sri Lanka. What we need is commitment, dedication, 'will', team spirit mutual respect and favorable attitude. "We" include all of us: the courts, police, forensic experts, 'political will' and commitment of the government and public.

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