

EDITORIAL

SOME IMPEDIMENTS IN THE SRI LANKAN SUBSTANTIVE AND PROCEDURAL LAW IN ACHIEVING JUSTICE THROUGH FORENSICS.

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The object of this paper is to highlight some curtailments and impediments apparent and practically operative in the procedural and substantive Law in Sri Lanka in connection to forensic investigations that hinder administration of justice. It is the belief of the author that a critical examination of these issues at least will initiate a thinking process in the minds of decision makers, practitioners and/or concerned public.

The Sri Lankan law prevailing in connection to forensic investigations dates back to colonial era and seem to only regard government officers or those officers who are attached to the state are as qualified and accepted in the law to conduct investigations and provide reports to courts on a forensic matter. This fact is true for many areas of forensic investigations including fingerprint analysis toxicology analysis or hand writing analysis. Because of this reason, private practitioners (if there are) in these fields or retired officers from previous state practice(if they want to), are kept away structurally and functionally from the justice administration process. In the fields of finger printing, hand writing or toxicology the substantive law categorically exclude private practitioners. Not only the statutory law excludes private practitioners but also they exclude any expert in these fields other than the officers concerned in the Government Analyst department or the officer of the police department for fingerprints. For example, the law and practice in Sri Lanka does not allow a private expert on fingerprint or hand writing or toxicology to primarily involve in

the investigatory process or provide a report in the first instance nor does the law seem to allow an expert in a university or another state department except at the government analyst department. Due to this reason, not only several university officers who were trained in these specialities had to migrate leaving a vacuum but also research and development in these fields hindered significantly let alone the obstruction on developing parallel experts in these fields in non-governmental or university sectors. As a result the government analyst department and the police departments have been inundated with an unbearable case load that delays court proceedings. Although the evidence law may allow a defence opinion in court it is not practically possible that the sample will be allowed to be analysed by a private practitioner in the first instance. The police and the courts would follow the 'routine' which is to send the samples to the government analyst department. The courts seem to be satisfied as long as the sample is sent for analysis at the government analyst and does not seem to explore experts elsewhere. This impediment has resulted in minimal research outcome in the fields of forensic toxicology, finger print, handwriting or ballistics in Sri Lanka. So far no university has been able to retain a trained person in these aspects due to the structural confinement of these specialities to Government Analyst department. Those who were trained in universities with relevant PhDs had to migrate elsewhere due to these restrictions. Neither the government analyst department nor the police or other ministries could train an expert with a

desirable PhD degree in these fields. The author strongly believes in the establishment of specialities such as ballistics, toxicology, finger and hand print analysis, anthropology etc at least in universities to improve research and development in these areas and to train and provide a second generation of these specialities to the nation. It is not possible to develop these areas in universities unless the restrictions and obstacles are lifted so that university or private laboratory scientists could not only engage in teaching training and research in these areas but also provide expert evidence in court which will substantiate their research and training material.

The scenario was different for DNA analysis in Sri Lanka. The court and the Sri Lankan system happily allowed DNA investigations and reporting to be carried out by a private Gene lab in Sri Lanka. By the time the relevant law was formed in Sri Lanka, DNA evidence was not available, therefore, it was possible for DNA to be investigated in a private laboratory. This move seems to have been successful. The other factor was that there was no DNA lab available in the state sector for many years in Sri Lanka other than this private laboratory. Therefore the state had to depend on this private laboratory to save money from sending samples abroad.

Similar restrictions are apparent for wildlife forensics as it is restricted to wild life department .It seems that the wildlife department has not specifically trained personnel in these areas of forensics. This aspect hinders the services of university experts already existing with such training, yet unable to provide their services due to these structural and attitudinal obstacles .Forensic anthropology is a separate branch of forensics but in Sri Lanka forensic anthropology cases are traditionally referred to the judicial medical officer amidst many of their other forensic pathological referrals. The universities have trained personal in forensic anthropology however their services and training are masked by these traditional practices of police and

courts. The ignorance of courts and police about sciences and experts available other than forensic medicine and pathology is one reason for cases not being referred to experts other than judicial medical officers.

Forensic odontology too is referred to the judicial medical officers traditionally and most dental injuries are reported by judicial medical officers in Sri Lanka. By educating the police and courts on the availability of forensic odontologists and making structural changes in the law and procedure will enhance the utilization of these experts in the country.

In regard to post mortem examinations the criminal procedure of Sri Lanka is very clear as to who these can be referred to and when. The law does not exclude private medical practitioners or ayurvedic medical practitioners from conducting post mortems but the traditional practice in Sri Lanka seem to popularly involve government medical officer/judicial medical officer at many times excluding the judicial medical officers of universities.

In order to provide justice, in order to develop the science and research in these areas of forensics it is very important and relevant to understand the impediments that prevails in the substantive and procedural legal structure, in the attitude of parties in order to make relevant changes to move forward with the rest of the world. It is also important to realise the negative role of egoistic attitudes, ill practises and hegemony of dominant forensic practitioners not only to serve justice but also to develop these fields for the nation as universities has the sole responsibility and authority of developing these disciplines and expertise for the future. However, universities cannot and will not be able to fulfil their obligations when other impediments such as those described above combined with the ego and political practices of some perceived powerful personnel and groups are identified and urgently addressed.