

Law's Delays and Management of the Judicial Process

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Abstract

This article addresses an important issue bearing on the image of the country's judiciary and the citizen's respect for the rule of law, viz., the issue of law's delays. The study is based on the writer's discussions with the members of the judiciary, legal practitioners and several other stakeholders. It diagnoses the causes of delay and recommends measures to expedite the judicial process.

1. Introduction

The Law's delays constitute a problem that afflicts most judicial systems in the world and Sri Lanka is no exception. The committees chaired by Hon. Wanasundera J. (1985), and more recently by C.R. De Silva J. (2004) and A.R.N. Fernando J. (2006) to address this specific issue show that the problem has received the deserved attention of the Judiciary. The inordinate delay in the dispensation of justice is a problem that has to be speedily addressed because it leads to a loss of public confidence in the judicial system, running counter as it does to the venerable dictum that 'justice delayed is justice denied'.

The focus of this study is on the procedural rather than the substantive aspects of the law, on the process rather than the content of the law. The emphasis is on managing the judicial process to achieve greater efficiency. The article is logically structured to cover three aspects. First, it describes the magnitude and the gravity of the problem. Next, it diagnoses its causes. Finally, it provides directions to expedite the legal process.

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2. Description and Analysis of the Problem

Table 1 indicates the number of cases pending in the Magistrates Courts (MCs). The number of cases pending at the beginning of 2005 was 225,383, but by the year- end it had risen to 256,206.

Table 1. Number of Cases Handled by Magistrate Courts (MCs)-2005

Description	Percentage (%)
Cases b/f from 2004- Total	225,383
Instituted during the year	374,688
Total No. of cases	600,071
Disposed during the year	343,814
Cases pending at year end- Total	256,206
Disposal %	$343,814/600,071=57.3\%$
Pending %	$256,206/600,071=42.7\%$

Source: Ministry of Justice, 2006

Table 2 provides a statistical update of the number of cases pending in District Courts (DCs). The number of cases pending at the beginning of 2005 was 85,456, but by the year- end it had risen to 91,883.

Table 2. Number of Cases Handled By District Courts (DCs) – 2005

Cases b/f from 2004- Total	85,456
Instituted during the year	40,583
Total No. of cases	126,039
Disposed during the year	34,156
Cases pending at year end- Total	91,883
Disposal %	$34,156 / 126,039 = 27 \%$
Pending %	$91,883 / 126,039 = 73 \%$

Source: Ministry of Justice, 2006

Exhibit 1 below shows the number of cases filed and disposed of in DCs during the period 2001 to 2005. There is a discrepancy in the statistics for 2005 shown in the Exhibit as against the data presented in Table 2. However, it is evident that the gap between the number of cases filed and the number of cases cleared has been widening.

A redeeming feature is that the rate of disposal of cases has been improving in recent years.

Source: National Council for Economic Development, 2006

While it is not possible to dispose of all cases filed in any particular year during the same year, it is observed that the accumulated backlog of cases is substantial. A study done by the Marga Institute among 278 judges (both serving and retired), and 4565 lawyers, carried the following pessimistic comment: “48.9% of Judges and 45.6% lawyers asserted that the judicial system was never expeditious” (Marga Institute, *A System under Siege: An Inquiry into the Judicial System of Sri Lanka*, Sept. 2002:45). The foregoing account shows that there are two separate issues to be addressed, which are equally compelling. The first relates to the clearance of the accumulated backlog of cases. The second relates to the more expeditious disposal of current cases.

Inordinate delays in the judicial system is an issue that needs to be urgently addressed as it breeds a cynical disregard for the law, and tarnishes the image of the Judiciary (Marga Institute, *Social Image of the Judicial System of Sri Lanka*, Nov. 2004). Delays cause financial loss and mental pain to litigants. The passage of time makes it harder to establish the facts in a case as memories fade or become less reliable. Some witnesses die and some may have moved to new locations. Case records are lost or misplaced. Delays result in dissatisfaction and disillusionment because the victims whose rights have been infringed cannot get speedy redress for the wrongs done to them. Under-aged victims of rape and sexual abuse and their parents undergo immense suffering and humiliation due to delays in the legal process. Accused persons are

imprisoned for long periods, and for some, this imprisonment is unfairly punitive when the trial would vindicate their innocence. This demonstrates the significance of the issue that is addressed in the present study.

Tables 3 and 4 provide an analysis of the cases that came up before the Magistrate's Courts and District Courts in 2005. Theft and robbery, and illicit liquor cases accounted for more than 65% of all the cases in MCs. With respect to DCs, the first four categories, viz. money, partition, land, and divorce cases accounted for 85% of all cases instituted.

Table 3. MC Cases by Type- 2005

Description	Percentage (%)
Murder & A/Murder	1.4
Rape	0.9
Theft & Robbery	20.3
Illicit Liquor/ drugs	47.4
Bribes	1.4
Maintenance	8.4
Other	20.2
Total	100 .0

Table 4. DC Cases by Type- 2005

Description	Percentage (%)
Money	30.0
Partition	21.0
Land	19.5
Divorce	14.5
Testamentary	2.5
Rent & Ejectment	1.5
Other	11.0
Total	100.0

Source: Ministry of Justice, 2006

The next section is devoted to a diagnosis of the causes for the law's delays.

3. Diagnosis of the Causes of Delay

(A) Problem of Coordination

The efficiency of the Judiciary depends not only on the actual work performed by courts but also on the degree of coordination and cooperation that exists between courts and several other institutions and stakeholders, viz. the police, the JMO/ DMO, the Government Analyst, the Attorney General's Department, etc. The speed at which work is performed in these institutions has a direct impact on judicial productivity. It is most unfortunate that a 'blame culture' has now emerged where each stakeholder accuses the other for the law's delays. There are many instances where police notify courts of the commission of crimes but delay to file plaint on grounds that investigations are still proceeding. The case is then called in courts and repeatedly postponed because investigations are incomplete. In instances where plaint has been filed and the case is taken up, the police officer who investigated the case might be absent either because he has been transferred to a new station or is away on special duty, and so the case for the prosecution cannot be closed. Cases also get postponed due to the inability of police to arrest suspects or to produce witnesses. In non-summary cases such as murder or rape where the police are required to submit papers to the AG's department, cases get deferred due to the non- receipt of the AG's report. The same shortcoming is noted with respect to reports due from expert witnesses such as the Government Analyst, the Examiner of Questioned Documents, and the Finger Print Expert.

Inordinate delays are particularly noted with respect of cases filed in District Courts, which tend to get prolonged for decades. Surveys need to be undertaken in partition cases and land cases, but they often take up to three years for completion. This is partly because judges give long dates and partly because surveyors who are commissioners of court, also undertake private surveys, which are much more remunerative. At times, the parties concerned have not settled in full the surveyor's fee for the preliminary survey, and so the surveyor would not be particularly keen to submit the final survey report that sets out the demarcations of lots to plaintiff and other parties. There are also certain jurisdictions that experience an acute shortage of surveyors, for example, Embilipitiya has only three surveyors. The most frequent delays arise in the service of summons where parties reside within a jurisdiction that is different from the one where the land is situated, and summons are not returned by the returnable date.

Finally, there is the need for greater collaboration between judicial officers and the court staff. In criminal cases, certified copies of proceedings are required by the accused's lawyers and in DC cases both parties need certified copies. Hence, error-free documents must be made available on time. There are instances where the Land Registry has issued two different certified copies to the plaintiff and the defendant

and so the documents are challenged. In criminal cases, which take considerable time for disposal, files, finger print slips and productions go missing; in land cases, files go missing from court houses.

The foregoing account highlights the need for closer coordination between judicial officers and other stakeholders in order to enhance the efficiency of the legal process.

(B) Problem of Control

Another significant source of delay is traceable to factors relating to control over court proceedings. Needless to say, judges must be able to exercise a high degree of control over court proceedings. Hence, the judicious management of the relationship with the legal profession becomes critical. Lawyers frequently ask for a postponement of cases. It may be for genuine personal reasons; or else, the lawyer might be practising in more than one court in which case he would not be able to appear in two different courts simultaneously. In such instances, senior lawyers send a junior who knows very little of the case to appear on his behalf and plead for a date. The tendency for lawyers to ask for dates is more when they are retained on an 'appearance' basis rather than when they have received a 'block grant'. It has been said that in granting postponements, judges have been somewhat liberal.

A great deal of delay also occurs when lawyers examine witnesses. Many irrelevant questions are asked and judges do not intervene when they should in the interests of better time management. This aspect has as much to do with judicial competence, and so it will be taken up under the problem of competence.

With respect to proceedings in DCs, it has been commented that judges do not manage their trial roll efficiently. Even with the full knowledge that only two trials can be competently handled in a day, some judges are known to fix five trials for a day.

Finally, there are weaknesses in the system of internal controls that prevail within the courthouse. As stated, cases get postponed either due to inaccuracies in documents or the non-availability of certified copies of proceedings.

(C) Problem of Competence

There are certain provisions already available in legislative enactments to expedite the legal process, the non-invocation of which entails delays in the dispensation of justice. Some of these are indicated below.

The Mediation Boards Act requires that before certain cases are taken up in MCs, the parties concerned should first go to the Mediation Board and only on a 'certificate of

non-settlement' from the Mediation Board could these be taken to the MCs. These pertain to minor disputes such as simple hurt (S. 314 of the Penal Code), intimidation, and money matters where the value does not exceed Rupees 25,000. If the case is filed in the MC in the first instance, the Magistrate can refer the parties to the Mediation Board.

Section 266 (1) of the Code of Criminal Procedure Act relates to the compounding of offences. In such cases, the Magistrate himself can suggest to the parties concerned that if they so wish they could agree to settle the dispute. The Magistrate should take the initiative in such instances as one cannot expect the private lawyer to do so. Likewise, in DCs too there are many disputes (e.g. outstanding debts) where parties can agree to payment either in full or in instalments, in which case the terms of settlement could be recorded in court. Litigants are ignorant of such provisions, and again the judge must take the initiative as one cannot expect private lawyers to do so.

As per Section 25 (1) of the Debt Recovery Special Provisions Act, the police or a private individual can file plaint in MC with respect to dishonoured cheques without requesting the aggrieved party to file a civil action.

As per Section 46(2) of the Civil Procedure Code, before any plaint is allowed to be filed, the court may refuse to entertain the same if it does not incorporate the essential ingredients. By implementing the above, subsequent delays could be curtailed. There are several other provisions in the Civil Procedure Code which could reduce the time taken at the trial proper, which are rarely resorted to viz. the provisions on interrogatories (Section 94), Notice to admit genuineness of Documents (Section 101), Order for Discovery of Document (Section 102), Order for production of documents (Section 103) and Notice to produce documents for inspection (Section 104). The objective of these provisions is to narrow the ambit of the trial and reduce the time taken. The failure to resort to these provisions may be for various reasons ranging from lack of knowledge, competence to apply such sections or plain disinterest stemming from apathy or a refusal to shorten the period of trial.

Regarding any offence under the Motor Traffic Act (MTA) that does not involve damage to any property or injury to person, the physical presence of the offender in court may be dispensed with by complying with S.224 (A) of the MTA.

It has also been said that much delay occurs when lawyers cross examine witnesses. Many irrelevant questions are asked, and judges do not intervene particularly when senior counsel appears for the defendant. In cases involving non-payment for goods supplied, it was said that without focusing on the core issue whether or not the goods were supplied, judges were supposedly going into irrelevancies such as details of company incorporation.

(D) Problem of Commitment

Adverse comments have been made by lawyers as well as litigants that court proceedings do not commence on time. If the judge is not punctual, it is said that court staff is also not available. Practitioners commented that the degree of commitment on the part of judges to dispose of cases is not at the most desired level.

The ensuing section provides some directions to expedite the judicial process.

4. Resolution of the Problem

The foregoing account showed that there are two separate issues to be addressed, both of which are equally cogent and compelling. First, strategies must be designed to clear the accumulated backlog of cases. Second, strategies must be designed to expedite the current judicial process. Both these issues have a great impact on enhancing the confidence of the public in the country's legal system and citizens' respect for the Rule of Law, and hence call for speedy action. Enactment of new laws and procedures, taking note of global developments and societal changes, would no doubt help to improve the current situation, but this aspect lies outside that scope of the present study.

Any major reform process to be introduced in an organization must be in harmony with the lofty ideals upon which such institution was established in the first place. The Judiciary is a key social institution that lays the very foundation for the socio-cultural and economic advancement of a nation. "It is the guardian of civilized society" (Lord Macmillan) and has been created for the benefit of the public. As observed by Sir Anthony Mason, Chief Justice of Australia, (1993): "The courts are institutions which belong to the people and their function is to serve the people". In similar vein, Robert Barton, Justice of the Massachusetts Superior Court, USA, observed that: "The courts belong to the public. They don't belong to the judge, the lawyers or the litigants" (A.R.B. Amerasinghe, 2002). All activities, including the law's delays, must therefore, be assessed against this standard. The country's Judiciary is committed to achieving efficiency in the administration of justice, and has given due recognition to the fact that law reform should "respond to societal needs in keeping with global advancements and the aspirations of the people". (Ministry of Justice and Law Reforms, 2006).

It was stated earlier that at the end of 2005, the total inventory of undecided cases stood at 256,206 in the Magistrates Courts and 91,883 in the District Courts. This is quite considerable and it is necessary to examine the vintage of cases to appreciate whether the situation is becoming intractable. Then, a determination has to be made as to which type of cases should be categorized as 'unduly delayed' ('backlogged cases') as against the remainder that is pending. If we say that undue delay occurs when the lapse of time is considerable, then it lacks specificity. It is necessary for the

Ministry of Justice/ Judiciary to arrive at an acceptable definition of the phrase ‘backlogged cases’. This is a vital first step that has to be taken to appreciate the magnitude of the problem. Otherwise, one cannot strategize on the solutions because “what cannot be measured, cannot be managed” (Robert Kaplan, Harvard University). Thereafter, the rate of case-clearance has to be monitored monthly using the formula:

$$\text{Case clearance \%} = \frac{\text{No. of cases decided per month}}{\text{No. of cases instituted per month}} \times 100$$

If the answer exceeds 100%, then the total number of cases is decreasing and the case disposal rate is commendable. In the absence of strategic action plans for case clearance, arrears would keep accumulating.

The ensuing section presents possible measures, A) to clear the backlogged cases and, B) to expedite the disposal of current cases. In offering solutions it is necessary to question some of the assumptions underlying the workings of the present legal system, and to benchmark and adopt the best practices of other institutions (with suitable adjustments), for the betterment of the organization. Here, the observation made by the eminent British jurist Lord Devlin is most appropriate, i.e. “If our business methods were as antiquated as our legal system, we would have become a bankrupt nation long back.”.

(A) Measures to handle backlogged cases

- i) Courts of law have been adhering to standard working hours but it may now be necessary to function for longer hours each day. There are countries where trials are staggered with one set of cases taken up during the morning session and another set in the afternoon, taking a cue from industrial organizations. This would ensure that litigants’ time is not wasted. This should apply to traffic courts as well, which could function until late evening in Colombo.
- ii) In order to implement the above measure, the judicial as well as the administrative cadres have to be increased.
- iii) Timelines should be set for the disposal of cases and should be very closely monitored by the Judicial Services Commission, and a monitoring unit at the Ministry of Justice. In the UK, this is done by the Lord Chancellor’s Office. The Administration of Justice Law (1973) had salutary provisions in this regard, and at least some of these could now be adopted. It is reported that a computerized case tracking system has been introduced recently in Sri Lanka to infuse greater efficiency and effectiveness to the existing manual processes.

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- iv) The performance of judicial officers should be evaluated not only on seniority but also on the rate of disposal of cases and the quality of orders made.
- v) Due recognition must be given to judges and magistrates who exceed the work norms, and a proper incentives scheme must be instituted.
- vi) Arrangements must be made to conduct periodic court inspections.
- vii) There is a need to upgrade the knowledge and professional skills of judicial officers. This would be discussed under Part B below.
- viii) There is a need for a greater use of technology in the conduct of court proceedings and preservation of court records. This would be taken up under Part B.

(B) Measures to expedite current judicial process

- i) It was emphasized that the efficiency of the Judiciary depends not only on the actual work performed by courts but also on the degree of coordination that exists between courts and other institutions and stakeholders. A magistrate or a judge assuming office could summon a meeting with the senior police officers and state his expectations regarding the discharge of duties and the court attendance of police officers. The judge should emphasize that requests for repeated postponements on grounds that inquiries are still proceeding would not be entertained indefinitely without a just cause, and that if there is no evidence he would have no option but to discharge the accused.
- ii) There is a need to exercise greater control over court proceedings. The attendance of police and other official witnesses in court should be taken up with the relevant heads of departments. Where lawyers ask for postponements, the judge should monitor the frequencies and not readily accede to such requests. Where a junior lawyer was deputed to appear in court merely to ask for a date, the judge should advise the junior that he should be prepared to conduct the case on the next date. A judge should not give the impression that he is indulgent to senior counsel and is harsh or intolerant to the junior.

Judges and Magistrates should exercise greater control over the activities of their own staff. The need for greater internal control arose because it was highlighted that at times certified copies of proceedings were not available on time. The quantum and the quality of work of judicial officers must also be monitored by the Judicial Services Commission.

- iii) The law is constantly evolving and judges need training to equip themselves with the requisite knowledge and skills for the efficient performance of their duties. This need is being addressed through the Judges, Training Institute. Workshops could be held for present judges and newly inducted judges on court and case management, and also on decision making, and judgment writing skills. Participation in training programmes should be encouraged through an incentives scheme. Library facilities should be upgraded and case law CDs should be developed.

Awareness levels should be raised regarding the already available legislative enactments that could help to expedite court proceedings.

Training also needs to be given to court staff in office and court procedures and also to Registrars, as they have a valuable supporting role to play in court work. The computer literacy of typists must be upgraded, and this should be backed by an incentives scheme. Training has to be given to process servers as well in the requirements of the law when effecting the service of summons.

- iv) With respect to job commitment, it has been said that “a judge should be prompt in the performance of the duties attached to his office, conscious that court time should be devoted entirely to public business. Habitual lack of punctuality can give rise to dissatisfaction among the litigants, witnesses, the members of the bar and the public” Justice Wimalaratne’s Precept no. 14. Precept no. 16 is to the effect that “a judge should organize the court with a view to the prompt and convenient dispatch of its business”. At present, no special incentives are offered to judicial officers to clear the backlog of cases, and so an incentives scheme must be designed to address this issue.

With respect to proceedings in DCs, an improvement that could be readily adopted is to take evidence on affidavits, so that the cross examination takes place on affidavits. Also, one should explore the possibility of conducting a pre-trial (or an informal trial) where a different judge goes into the merits and demerits of the case and gets the parties to go into a negotiated settlement; if the parties do not agree,; then another judge will hear the case, in which case the costs will be heavy on parties.

- v) The use of information technology (IT) in court work has been very limited, and its wider use can contribute significantly to improving both the quality and efficiency of the work performed by the judiciary. The Justice Shetty Commission Report (1999) cited in Lokur, M.B., 2005, “Enhancing Judicial Performance through Better Management”, made the following observation which is applicable to judicial systems of many developing countries: i.e. “It is

distressing to find that the judiciary continues to be the one major institution in society untouched by the three revolutions of modern times, namely technological, communication, and management-related changes. The obvious example is the non-use of computers in judicial work. Procedures are archaic and they are made worse by outmoded administrative and management systems.”.

The ways in which a wider use of IT can improve the current situation are set out below.

- (a) Information technology is useful in recording court proceedings. At present, what is said by witnesses in court is simultaneously recorded in short hand by a stenographer (on a diary) and typed thereafter. When parties come to obtain the certified copies on a subsequent date, they find inconsistencies between what they had said and the contents appearing in the certified copy. The judge has now to check the stenographer's short notes against the certified copy and if needed, issue a fresh certified copy. This procedure can be streamlined by typing the court proceedings on a computer, displaying the same on a wide screen installed in the court house, taking printouts, and issuing the certified copies promptly to the relevant parties. Finance is not the constraint, and a start be made in Colombo and the other provincial capitals.
- (b) ‘Technology can be used to scan documents. Once scanned into electronic form, documents can be displayed on a computer screen or via a video projector. It is especially appropriate where a trial involves large numbers of documents and where these need to be presented in court’ (Mowbray, Justice and Technology, 2000).
- (c) Computers can be used to generate certified copies of orders and pay slips and streamline office operations.
- (d) Electronic mechanisms can be used for filing documents and storing and preserving court records. The speedy retrieval of files is a major problem under the present legal setup, and IT can be extremely useful for registry purposes. It transpired that the implementation of the Japanese Five S” system in Colombo courts did not meet with the desired success. The success of the “Five S” system rests on several factors such as top management commitment and support, strong steering heads, internal competition among divisions and awards for innovative practices. Whether the failure was due to a flaw in a concept that underlay Japan’s “quality revolution” or shortcomings in the process of implementation merits scrutiny.

5. Conclusion

This study focused on managing the judicial process to achieve enhanced efficiency. It was seen that the mounting backlog of cases, the emergence of ‘a blame culture’ and the pessimistic views expressed regarding case clearance by serving judges and lawyers are bound to tarnish the image of the judiciary. The study ended by proposing measures to clear the backlog of cases and expedite the current judicial process. What is needed is a detailed action plan with clear timelines to address these twin issues because “what cannot be measured cannot be managed”.

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