

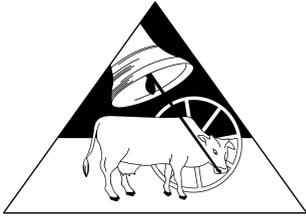
LSTSYNOPSIS

**A SNAPSHOT OF THE
CRIMINAL JUSTICE
SYSTEM: BUILDING A
PICTURE THROUGH
SEXUAL VIOLENCE
CASES IN THE COURT
OF APPEAL**



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LAW & SOCIETY TRUST

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Any responses to this synopsis are welcome and may be communicated to us *via* email or post.

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A Snapshot of the Criminal Justice System: Building a Picture Through Sexual Violence Cases in the Court of Appeal

In the current environment of transitional justice in Sri Lanka, there is an inevitable focus on considering the criminal justice system from the perspective of the most 'egregious' crimes. For this reason, it is imperative to ensure the 'everyday' workings of the criminal justice system do not get overlooked. The Law & Society Trust, therefore, is undertaking ongoing research to inquire into the 'everyday' workings of the criminal justice system. The purpose of the ongoing research is to begin the process of building a picture of how the system operates on an 'everyday' basis to highlight the areas that require reform. This study evolved from the ongoing research. Sexual violence offending was selected as a thematic focus for the study. Court of Appeal judgments were selected as the focus of the data compilation as they are in the public domain and could be systematically studied. In short, the study compiled a set of 121 Court of Appeal judgments on sexual violence (rape and grave sexual abuse) and asked the question: *What do Court of Appeal judgments on sexual violence reveal about the workings of the criminal justice system?*

Methodology

The rationale for selecting court judgments was as a pragmatic starting point to the collection of empirical information about the criminal justice system. Court judgments are official documents which are meant to detail the process, reasoning, and outcome of a trial, as well as contain information about victims, the accused, and the operations of the police, prosecutors, and judges. Court judgments are also, theoretically, in the public domain. Given the overall purpose of the research is to look into the 'everyday' workings of the criminal justice system, the study only utilised publicly accessible material.

Within the category of theoretically publicly available court judgments, Court of Appeal judgments were selected as the focus because they are, in fact, in the public domain, exist in a sufficiently large number (over 100), and could be compiled spanning a period of five years. Compiling information about sexual violence cases from Court of Appeal judgments enabled two tiers of information to be collected: (1) information on trial court decisions that formed the basis of the Court of Appeal judgments, and (2) information on the Court of Appeal judgments themselves. A meta-analysis was undertaken on this set of Court of Appeal judgments relating to sexual violence cases: disaggregated information (individual court judgments) was compiled together to form a corpus of information.

Findings

The analyses of the dataset revealed a number of key findings, highlighted below. In addition, the analyses of the dataset also revealed a number of issues and concerns that warrant further inquiry. These findings and the questions raised are critical to inform and shape discussions on criminal justice reform.

The key findings arising from the study include the following:

- There was visible disparity in the sentencing of rape and grave sexual abuse, at trial and upon appeal.
- The disparity in sentencing related to all three components of a sentence – custodial sentences, fines, and compensation imposed.
- The disparity also related to default sentences imposed for non-payment of compensation.
- Despite mandatory minimum custodial sentences for rape and grave sexual abuse, custodial sentences were ordered below mandatory minimum sentences, at trial and upon appeal.
- Despite mandatory minimum custodial sentences for rape and grave sexual abuse, and despite the Criminal Procedure Code excluding suspended sentences as an option where an offence contains a mandatory minimum sentence, suspended sentences were ordered, at trial and upon appeal.
- All suspended sentences ordered in the trial phase involved guilty pleas.
- While the State pursued prosecutions that resulted in convictions, upon appeal, the State conceded that convictions could not be supported.
- Where convictions were overturned upon appeal, victim credibility (not believing the victim's evidence) was the recurring reason.

- Vast amounts of information that ought to be in the public domain (lower court judgments) were inaccessible to the public.
- The existing court judgments that were in the public domain (Court of Appeal judgments) had unclear, ambiguous, or erroneous information.

Observations

The disparity in sentences illustrated a lack of uniformity and consistency in judges' approaches to sentencing sexual violence offending. The non-adherence to statutory minimum sentences and ordering suspended sentences compounded the lack of consistency in sentencing. The existence, and extent, of sentencing disparities alerts to larger issues around the exercise of judicial discretion and the need for sentencing guidelines and other parameters to ensure consistency, fairness, and to minimise arbitrariness in judicial decision-making. Disparity in judicial decision-making, including non-observance of legislative constraints, indicates the exercise of judicial discretion is an area of the criminal justice system that requires attention when discussing reform.

The existence of cases where, upon appeal, the State conceded the convictions could not be supported – in other words, that they should not have occurred – indicates prosecutorial policy also requires attention when discussing reform. Furthermore, it demonstrates a need for monitoring and oversight of prosecutions and the trial process.

Victim credibility was the recurring reason in cases where the Court of Appeal overturned trial convictions. Other reasons included the emphasis placed on the existence, or otherwise, of medical evidence and the emphasis placed on the delay in reporting the incident to anyone, including the police. The recurrence of victim credibility as the reason for overturning convictions upon appeal indicates the evaluation of evidence undertaken by judges in sexual violence cases and the factors

that influence their decision-making requires attention when discussing reform. As does the emphasis placed on medical evidence and the delay in reporting the incident.

The impediment that existed in the public accessibility of court judgments (lower court judgments) was an overriding finding. Although Court of Appeal judgments were publicly available (on the Court of Appeal's website), they contained unclear, ambiguous, or erroneous information (such as cases where the Penal Code offence was not specified). This information could not be clarified because the trial court information that would be required to clarify it could not be publicly accessed. The inability to access key material about the criminal justice system – court judgments – is a significant factor that prevents the ability to understand and assess the multitude of processes in the criminal justice system.

More broadly, the study illustrates the importance of compiling detailed information and adopting an empirical approach to understanding how the criminal justice system operates in practice. Extensive analytical work can be undertaken from even a limited catchment of publicly available official material. Aggregating similar information (such as court judgments) results in issues becoming visible, which would otherwise not be obvious in isolated judgments (such as the extent of disparities in sentencing). An empirical approach is crucial to identify, understand, and substantiate issues.

The study highlights the quantum of details necessary to be able to build a picture and understand the workings of the criminal justice system in practice. The judgments studied are an illustration of how sexual violence cases operate. This in turn is an illustration of how the criminal justice system operates. The study highlights the importance of compiling information that exists about an issue. On the flip side, the study also demonstrates the limitations that exist in being able to compile information – that there is actually very little

official information that is publicly available *to be* compiled. Further, even in the catchment studied, ambiguities in the material could not be clarified as this would require information that *is not* in the public domain. The existence of publicly available information, and the absence of what ought to be publicly available information, are both significant factors in being able to understand, and then assess, the operation of the criminal justice system, especially as a precursor to reform discussions.

The study represents a snapshot of the criminal justice system, as visible through the study of 121 Court of Appeal judgments on sexual violence offending. It starkly highlights the need for further inquiry into a raft of issues, including practices, such as the restriction on access to court judgments; decision-making by key functions, such as the rationale for sentencing practices or the decision to indict an accused; and court processes, such as handwritten record keeping and the quality of information in court judgments. Approaching criminal justice reform is an enormous undertaking that requires time and a systematic approach. The issues identified and the questions raised by the study are important to recognise and incorporate in future approaches and processes when reforming the criminal justice system.

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The full report will be published by the Law & Society Trust in December 2017.

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