

Justice delayed –Justice denied; a study on time intervals of medico-legal examinations, reporting and giving evidence in cases of alleged child abuse victims

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Abstract

Introduction: A medico-legal examination is an important step in the legal system where initiation of giving justice to the victim begins. Giving 'Justice' is a process where many stake holders are involved. An undue delay in the system is considered as justice denied as well as draining of the value of the judgment.

Objective: to find out the time frames of the medico-legal examinations, reporting, and giving oral evidence in a court of law and recommend measures to improve the existing system.

Study Design : Retrospective descriptive study was conducted based on case records maintained by first and second authors for past ten years. The information was gathered on a proforma to fulfill the objectives. The data was analyzed using version 16 of SPSS statistical package.

Results: Out of 110 cases studied 78% of cases were on alleged sexual abuse. 52% belonged to the adolescent age group (12-18). 74% of cases were seen within 24hours of issue of MLEF but 5.5 % were seen after 7 days. 56(51%) cases examined did not receive summons/request from a relevant authority indicating that either the cases were settled with the police or no further investigations carried out. Response to summons/request for MLR was good (80% were sent within 3 months). Mean time taken to summon/request a report by the relevant authority was 17 months, while mean time to receive a summons from the High Court was 50.6 months (4.2 years). The mean time taken to give medical evidence was 62.5 months (5.2 years) from the day of the examination.

Conclusion: There was no delay in initiation of medico-legal examination. Responding to summons was satisfactory. However, the mean period of 1.4 years in requesting the report and period of 5 years in high court proceedings need serious considerations.

Keywords: child abuse, court case, summons, medical evidence

Introduction

Medico- Legal examination is an important step in the investigation of alleged child abuse where initiation of giving justice to the victim begins. It is not limited to an examination; but includes relevant referrals to the medical management, writing the report to the courts and finally giving evidence in a court of law. Any delay in the process can be categorized as the old famous saying by William Ewart Gladstone

(1809 - 1898) "Justice delayed is justice denied" as well as draining of the value of the judgment. [1],[2]

A forensic doctor examining a child alleged to be abused for a medico-legal purpose is part of his or her routine duties. However, it may be a turning point in the child's life though he or she may not be aware or understands the judicial process. While the legal process continues child and family too adjust to new challenges.

Nonetheless, research suggests that a prolonged criminal-court experience is detrimental to a child victim's mental health [3][4]. One such study found that children who had to wait more than five months for resolution in criminal proceedings had increased depression and anxiety compared to children whose cases were resolved within five months [4]

The process of delivering justice is complex. It involves many stake holders such as police, medical experts, child care workers, state prosecutors and the Judiciary of a country. According to the current phase of delivery of justice in Sri Lanka, an examinee coming to the forensic doctor many years later requesting to stop the judicial proceeding is getting common. The main reason stated is that the individual has moved on with life and not interested in obtaining justice or punishing the perpetrators any more.

Therefore, studying into the delays in serving justice has to be done in a scientific manner without blaming each other because justice delayed is not only justice denied, but also means increasing costs to the system, the Government and ultimately to the people of the country.

Objective

To find out the time intervals of the medico-legal examinations, reporting, and giving oral evidence in a court of law and recommend measures to improve the existing system.

Method

Retrospective descriptive study based on case records maintained by first and second authors for past ten years on alleged child abuse were analyzed regarding the time intervals of

examination, receiving request/or summon to send the report to the Magistrate Court or Department of the Attorney General and giving medical evidence in High Courts. A proforma was prepared to streamline the gathering of information to full fill the objectives. A child was defined as a person below 18years of age. 110 cases of child abuse were selected depending on the availability of the quality of the data. The data were analyzed using SPSS –version 16 statistical package using percentages.

Results

Out of 110 case records analyzed 52% of were on adolescent age group (12-18) while 40% were elementary school (5-12 years). 8 case records belonged to pre-school age children (7%) and one case was on a toddler(1%). There were no case records in the study sample on an infant. Majority of the cases (78%) were on alleged sexual abuse while 19% were on alleged physical abuse. There was only one case of child neglect. In majority of cases (65% -n-71) alleged perpetrator was a known person while 13% (n-14), 16% (n-17) and 5% (n-5) were boy friends, blood relatives and strangers respectively.

Among the cases of summons not received, cases of incest, positive medical evidence including presence of sperms, STI, pregnancy, alleged sexual abuse in boy's hostels were found. This indicates that about half of the cases were either "solved/settled" or not investigated further at the level of the police in this study sample.

There was a considerable variation in the time taken to send a report to the courts after receiving summons/request. However, majority (80%) were sent within 3 months of receiving summons.

Table 1- Results on time intervals of the preparation phase for trials (investigation to indictment in a High Court) of an alleged child abuse where medical officer's services are obtained.

Category	Time frames	n	%
Duration of time between the issue of the MLEF and examination by the doctor (Work involved: police and the doctor)	<24hrs	81	74
	24-72 hrs	17	15
	3-7 days	06	5.5
	>7 days	06	5.5
	Total	110	100
Time taken to receive summon or request from the date of examination (Work involved: Police and the Judiciary)	< 1 months	06	5.5
	1-3 months	06	5.5
	3-6 months	13	12
	6-12 months	12	11
	12-24 months	11	10
	>24 -60 months	08	07
	>60 months	03	03
	No summon	51	46
	Total	110	100
Mean time taken to receive the summon from the date of examination (Work involved: Police and the Judiciary)	17.12 months	1.4 years	
Median time taken to receive the summon from the date of examination (Work involved: Police and the Judiciary)	9.2 months	0.77 years	
Time taken to send a report to the courts from the date of receiving summon/request (Work involved: Doctor and the supporting staff in Health Sector)	<1 week	13	12
	1-2 week	08	07
	2weeks- 1 month	15	14
	1-3 months	11	10
	>3 months	12	11
	No summon received therefore report not sent	51	46
	Total	110	100

The analysis of the doctor receiving summons from the High court to appear and giving medical evidence (Table 2) showed that there was a considerable time gap from the date of examination. It took about 4 years to reach the trial stage and another one year to give medical evidence. In this sample of 110 medico-legal examinations, only 26 cases (24%) had proceeded for a trial in the High Court so far and only in 18 cases or 16% of original allegations medical evidence had been concluded.

The age related analysis of the cases so far indicted in the High Court and medical evidence concluded (Table 3) revealed that there was no significant difference between children and adolescents. This shows that no priority was given according to the age of the child when trials are initiated in a High Court.

Table 2: Results on time intervals of the medical evidence in the trial stage at High Courts

Time taken to receive the first summons form the high court from the day of examination	n	%	Time duration form examination to giving evidence in high court	n	%
<1year	03	3	< 1 year	0	0
1-3 years	06	6	1-3 years	2	2
3-5 years	08	7	3-5 years	6	5
5-7 years	04	3	5-7 years	7	6
7-10 years	05	5	7-10 years	3	3
Not received	84	76	Not given	92	84
Total	110	100	Total	110	100
Mean duration :	50.69 months	4.22 years	Mean time:	62.5 months	5.21 years
Median duration	47.5 months	3.96 years	Median duration	65.0 months	5.42 years

Table 3- Age related analysis of the cases in the High Courts from the receipt of summons and concluded medical evidence

Age	Summons to receive from High Court <5 years	Summons to receive from High Court >5 years	P value
0-12 years	10	6	0.846
12-18 years	7	3	
	Medical evidence concluded in < 5 years	Medical evidence concluded in > 5 years	
0-12 years	3	6	0.395
12-18 years	5	4	

Discussion

With the release of statistics on child abuse cases pending in courts in Sri Lanka by the Ministry of Justice in latter part of 2009, a revisit to the system was highlighted by all the stake holders involved. Out of approximately 15,000 trials currently pending nationwide, more than 4,000 (27 %) involve some form of violence toward a child, while the proportions were higher (over 50%) in courts outside Colombo. [5][6]

When awareness of child abuse was started in Sri Lanka in late 80s many changes were brought to the legal system and the field of child protection. These included law reforms, establishment of the National Child Protection Authority (NCPA), establishment of special units in law enforcement and Judiciary to cater to the problem. 20 years later the statistics on reporting of child abuse shows that the problem is still growing [7]. With the increasing case load it is obvious that the current system is inadequate to handle the situation effectively.

Our study showed that there was no delay in the doctor commencing the medico-legal

examination from the time of issue of the MLEF, indicating that there is a good trend of recommended practices amongst doctors to consider that an examination of a child as a matter of medico-legal emergency. This may be due to the fact that majority of allegations were related to child sexual abuse. Although we studied only one aspect of the investigation i.e medical evidence, delays can be categorized into three main areas. Firstly, delay due to the examinee issues, delay due to issues related to police and thirdly medical examination issues. Since the reasons are multi factorial addressing each is beyond the scope of the study. However, each delay contributes to the overall delay in serving justice.

The time intervals regarding the issue of serving summons to the doctor to send the report to the court showed that there was a considerable delay. (mean time taken was 17 months) The procedure in sending summons to a doctor from a Magistrate Court involves several steps where the investigating police officer has to make a request from the Judiciary followed by a process involving the court staff. Therefore, any delays in this area are beyond the control of the doctor.

Sending a Medico-Legal Report to the courts after receiving summons too is a lengthy process. The doctor has to draft, type, edit, proof read, print and finally, dispatch the report to the court. Many persons and resources in the health sector are involved in this process. According our findings the time interval of sending the report to the court from the day of receiving summons/request was satisfactory (80% were sent within 3 months). However, when the calculations are done from the examination day, delays become more prolonged.

The analysis of the time intervals of receiving summons from the High Court or the time of reaching the trial stage seems to be very much delayed i.e. mean duration was about 4 years and another year to give medical evidence,

which is very unhealthy especially for the child. Duration of the disposition of the case or reaching trial stage is dependent on many factors. The police have to complete the file with necessary submissions and investigations, and send it to the Attorney General's Department to file charges and decide on the trial where many stake holders are involved. Although the doctor receives the first summons from the High Court indicating the commencement of the trial medical evidence is taken at the latter part of the trial. In some cases the perpetrator may have pleaded guilty in the beginning of the trial. Delays may be linked to the postponement of cases by courts, instructing lawyers or experts involved. Therefore, in-depth audits into cases are needed to get a holistic picture.

The age related analysis showed that there is no significant difference in two age groups that resulted a trial. Children are growing and an adolescent subjected to abuse will be a young man or woman ready for marriage when the case is heard in the High court. Even though a negative incident happened, children move on with life and new set of problems will be faced by them. With this undue delay, the victims as well as the witnesses loose the interest in seeking the justice.

Giving justice to an individual is a complex process and it can be divided into two phases, i.e. preparation phase and a trial phase. A forensic doctor plays an important role in both phases. In the preparation phase, examination and sending the Medico-legal report and in the trial stage giving evidence. Therefore, it is very important to find out exactly where the delay is because the problem may be simple such as difficulty in tracing the doctor who had been transferred to another station or complex as the present system is not enough to cater to the growing population needs. These have to be identified properly with scientific studies and address them at the policy making levels rather than blaming each stakeholder in the system. Court system delays are not only limited to Sri

Lanka with its adversarial system. It is endemic to all legal systems in all over the world.[8][9][10] Research on child abuse and case resolution studies showed varying results where many US base studies shows that it takes about one year, on average, to reach a criminal disposition in a case, another year to conclude a trial summoning up as whole process to be just little more than two years [11][12]. According to a study from Chicago USA in 1986-87 of a cohort of 451 allegations of child abuse only 5% (24) of original allegations resulted in trials[11]. Although our study showed that out of 110 medico-legal examinations of child abuse conducted by two authors from 2000-2010, resulted 24% being indicted in the High Court we cannot come into a conclusion regarding the apparent differences because the study methodology differs. The former study was based on data from the Police, Medical Examinations, District Attorney and the Judiciary whereas ours was based on medico-legal case records only.

Limitation of the study

This study was done based on case records maintained by first two authors who were in teaching units. Therefore, generalizing our findings as that of all medical doctors who conduct medico-legal work cannot be done, because attending to the examination and formatting a report depend on so many factors including the attitude towards children, resources available as well as the working norms. Therefore, a comprehensive study representing all medico-legal doctors should be carried out to find the exact picture.

Another limitation of the study is that difficulty in getting a holistic picture regarding the Judicial System based on analysis of the time frame of medical evidence alone. Not receiving summons from the High Court may be linked to pleading guilty at the commencement of the trial. Therefore, an audit on the progress of the child related cases should be done in Sri Lanka to identify where the problem lies. Other

limitation of our study is in the interpretation of age base analysis for prioritization. This has to be done with caution since priority is based on many factors in real life issue. Therefore the needs of audits are very much highlighted if we are to recommend guideline on prioritization. However, age should be one such factor that should be considered in prioritization.

Conclusions & Recommendations

The study clearly showed that though there were no delays in the initiation of the medico-legal examination. However, the duration taken to send the medico-legal report to the court of law was not quick as initiation of the examination. The delay seen was mainly due to a system delay where the doctor cannot be held responsible of, because the response to the summons by the doctor was quite satisfactory except the delay in receiving summon. The delays in the indictments in High Court and the medical evidence were very obvious. The reasons for delays in these areas are also beyond the control of the doctor.

Therefore our suggestion is to have a method or a system where the doctor who examines a child for alleged abuse to send the MLR as soon as possible to the Department of the Attorney General with a copy to the Police without waiting for summons from the Magistrate Court. Although non summary proceeding at the Magistrate Court has been abolished for past few years a system has not been developed to get the report from the doctor. Therefore a formatted request form from the investigating police or the Department of the Attorney General may be adequate to solve the issue. Then the Department of Attorney General and the Judiciary can decide whether to indict the case or not in the High Court and the time frame to indict after going through the full report of the medico-legal examination. The other recommendation we make is to have a web site maintained by the Ministry of Health regarding a medical officer's current station of

work for the problem of difficulty in tracing doctor's whereabouts when the trial stage comes. This has to be done in a methodical manner since every 4 years medical officers are transferred from one station to the other. Our third recommendation is to campaign continuously to develop an attitudinal change among stake holders on seeking remedies to overcome the situation by not in compartmentalize thinking but in a broader multi-disciplinary manner with the theme of "Justice delayed is justice denied because today's child is the tomorrows father or a mother".

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Contribution of authors

Design to the study - PASE, IDGK

Supervision to the study- PASE

Analysis of the data- PASE, AASS, BAARB

Interpretation of the results- PASE, IDGK

Writing the manuscript -PASE

Revising the manuscript-IDGK, PASE