

සෑම දෙනාටම එකිනෙකා තමන් ගේ නමින් අමතන්නට හැකි වෙන දින අප දියුණු වුවා යැයි සලකන්නට හැකි බවයි. රටක දියුණුවේ ප්‍රධාන ම සාධකයක් විය යුත්තේ රටවැසියන් ගේ සමානත්වයි. සියලු දෙනාටම එකම අයිතිවාසිකම් සහ එකම වගකීම් තිබිය යුතු අතර, එකෙකු අනෙකාට වඩා උසස් හෝ පහත් නොවිය යුතු ය. අප සහමුලින් ම හැකි කර ගත යුත්තේ පිදිය යුත්තට පිදීම හෝ ගෞරව කළ යුත්තට ගෞරව කිරීම නොව, ඒ පිටුපසින් එන බලු ගැන්වරකමයි. අතින් පසට එන හයිරොකාරකමයි. මීට අමතරව අද සමාජයේ වෘත්තිකයින් අතරට ද පැතිර ඇති පිළිගසක් වන අයිියා මල්ලි (අක්කානංගී) ඇමතිව ද සහමුලින්ම

හතර විය යුතු ය. වය ආධිත්වයෙන් සහෝදරකමට පමණක් සීමා විය යුතු ය. මගේ අදහස අනුව අයිියාමල්ලි (අක්කා නංගී) ඇමතිවීමෙන් ගම්පහින්දේ ද හයි රංකාරබලු ගැන්වරකමයි. වය දියුණු සමාජයකට අනවශ්‍ය පන්ති හේදයකි. නොදියුණුකමෙන් දියුණු තත්වයකට අප පත්වීම සලකුණු කෙරෙන දෙවැනි නිර්ණායකය ලෙස මා දකින්නේ පෙර කී මුල් අවශ්‍යතාවයට වඩා සහමුලින්ම වෙනස් වීමයි. වය මෙසේ ය. ලංකාවේ පුරවැසියන් ගැවසෙන සෑම ප්‍රසිද්ධ ස්ථානයකම, විශේෂයෙන් ම කාන්තාවන්ට සහ පොදුවේ සෑමට ම, නිරීක්ෂකයන්ගේ තොරව තම ගරු කෘතියන් සිදු කරගත හැකි පොදු වැසිකිළි ගොඩ

නැති පැවතෙන දිනයක අප දියුණු රටක් වුවා වෙනු ඇත. පොදු වැසිකිළිවල නිගමන මෙන් ම, තිබෙන පොදු වැසිකිළිවල අපිරිසිදුකම නිසා ම, තමන්ට නිවසෙන් පිටවී පැය දෙක තුනක ගමනක් සාමට ඇති නම්, ඊට පැයක පමණ කාලයක සිට දියර වර්ග නොකී වෛද්‍ය පරීක්ෂණයකට මෙන් සේ වෙන්වන කාන්තාවන්ට සිදුවෙන තාක් කල් අප ලබන දියුණුවක් නැත. පිරිමින් ගේ තත්වය කාන්තාවන් ගේ තත්වය තරම්ම කනගාටුදායක නැති මුත්, පොදු පිරිමි වැසිකිළිවල තත්වය දුටුවොත් බල්ලන් බත් නොකන බව අපි හොඳින් දකිමු. මෙය වැසිකිළි පහසුකම් සැපයීම පිළිබඳව ම ප්‍රශ්නයක් නොවේ. වැසිකිළි පාවිච්චි

කරන්නන් ගේ නොදියුණු, ආන්මාර්ථකාමී හැසිරීම ද, අද ඇති බේදපනක තත්වයේ එක් ප්‍රධාන සාධකයකි. ඊට දියුණු වුවා යැයි සැලකීමට නම්, රටේ පුරවැසියන් ගේ දියුණු හැසිරීම ද මනාව ප්‍රදර්ශනය විය යුතු ය. මගේ ප්‍රාර්ථනය, සමානයන් වෙසෙන, පිරිසිදු වැසිකිළි ඇති සුපිරි රටකි. වය අති සරල වචන කිහිපයක් පමණක් වුවත්, එවැනි තත්වයක් සාක්ෂාත් කර ගැනීම ලේසි පහසු කාර්යයක් නොවෙන බව කණගාටුවෙන් වුව ද කිව යුතු ය.

රසිකොලොජිස්ට්  
(rasikalogy.blogspot.com)

# The Exposure of Disgusting Abuses: The Justice System of Sri Lanka:

## Evaluation of Its Impact on the Public & Strategy for its Remediation

### Executive Summary

While commending efforts of Attorneys Nagananda Kodituwakku and Ms Sugandhika Fernando, to formulate a strategic follow-up plan to foster their aims, it is important to assess the true impact of the presentations made up to now in respect of the subject on the public and the national economy. Hence the need to evaluate the following:

(a) the quantitative impact of Sri Lanka's Judiciary's escalating disarray, eroding public confidence on the national economy based on revelations of the 2013 World Bank study: lack of reliable data and Information and Communication Technology (ICT) tools that are essential for management; escalating backlog of cases, almost 850,000, most pending for over a decade and increasing; the resulting litigant population, nearly 70,000, forced to commute daily to Courts in the midst of traffic congestion and parking hassle at courts, road accidents etc., most to be informed of the next calling date instead of their cases being dealt with. This is compounded by the litigants' task of obtaining and filing copies of documents and the attorneys filing papers without consulting clients, thus disregarding critical errors and omissions. The resulting daily national loss of productivity of nearly 50,000 man days. Their outcome is the very lucrative enrichment of the legal fraternity at the expense of national productivity and public convenience;

(b) the Constitutional Assembly's Judiciary Subcommittee Report: endeavoring to preserve the status quo by overlooking the most anguished public inconveniences aforesaid at (a) above; not revoking the perk of Three Court Vacations of 70 days despite it eroding the average delay per pending case, by nearly 20 percent;

(c) the importance of E-court services and Lay Judge system: a multidisciplinary platform of expertise field proven in many countries, including China, India and Bhutan- creating synergies to generate integrative knowledge focused to resolve pending problems of the Judiciary; -to accomplish the aims of the new Constitution Mr Kodituwakku intends to put up to remediate the notorious ills of the current

system; and

(d) the impact of Jurisdictions due to the void of expertise guidance: illustrating its ILLS by an example of the very notorious jurisdiction in entirety by a team of the legal fraternity in SEATS of POWER upholding a flawed Telecom Tariff proposal prepared by THREE attorneys and published around July 2007. It is yet afflicting the public - an outcome that could have been averted had the bench comprised a mix of Professional and Lay Judges .

**1. The Exposure of "Some Disgusting Abuses of Sri Lankan Justice System,"** by attorney Sugandhika Fernando, the appeal by Attorney Nagananda Kodituwakku for unswerving public support, to rid the malaise of the Judiciary - the guardian of the nation's peace, order, and good governance, of its aberrant and rent seeking conduct, depriving of the most important deliverable, affordable and expeditious delivery of Justice, yearned by the public, but neglected for generations of the Parliament. It is a loud whisper decried then and now by the public, and -though very few in number-, also by bold luminaries of the fraternity; *for example, a prominent luminary of the fraternity, PC Romesh De Silva- opining to the Sunday Observer "I have spoken many times about the issue on different platforms and even addressed the Bar Association. I don't want to speak about it anymore".*

'Daily Mirror 7 May 2008, SLT cheats through Mathematical Jugglery

**2. The 2013 World Bank study** also reveals inefficacies of its management, gross lack of reliable management data, ICT tools even the most basic like email service, resulting in a backlog is said to be over 850,000 cases most of which are pending over a decade and steadily increasing. The estimate of consequent litigant population of nearly 70,000 is forced to commute daily to Courts, -most to be informed of the next calling date, yet forced to travel in the midst of aggravating traffic congestion, road accidents and parking hassle at courts etc. The resulting daily national loss of productivity is nearly 50,000 man days. The outcome of all these is the very lucrative enrichment of the legal fraternity at sacrifice of harsh erosion of national productivity and public convenience.

**3. The Public Inconvenience is aggravated** as there seems to be no recognized ethical code binding the conduct of the legal profession such as that prescribed by the IBA as quoted below in Table 1. This lapse is often exploited by attorneys in not providing court filing in advance for perusal by the client but providing it few minutes before or after filing.

**Table 1: Excerpts from the International Bar Association (IBA): International Principles on Conduct for the Legal Profession**

**Lawyers' undertaking**  
A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

**Competence**  
A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

**Fees**  
Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.

**4. The Constitutional Assembly's Judiciary Subcommittee Report** evinces the high likelihood that the status quo would be preserved. The report less than 8 pages, is minuscule in comparison with content of other Subcommittees Reports that are 50 pages or more. That too, excepting for independence of the Judiciary, the report extensively devotes more than 6 of its 8 pages for fortifying interests and well-being and opulence of judges. Its uncaring attitude to public convenience is shown from not doing away with the perk of Three Court Vacations of aggregate of 70 days ignoring its adverse impact eroding the average delay per pending case, by nearly 20 percent, whereas the colonial master who introduced the perk to - Sri Lanka- then Ceylon has done away with it well over two decades ago.

**5. Most disturbing is the Judiciary**

**Subcommittee** blatantly overlooking to remedy the aforesaid deprived People' Right of access to Justice: affordable and expeditious; the imperativeness, of field proven e-court services equipped with ICT tools -availed of even in nations like Bhutan- one of the crucial requisites - let alone the most basic email service is yet to be provided to its court system - to improve its deplorably poor management efficacy; avert the hassle of time and the cost of commuting to courts; overcome incompetency of the vast numbers of the fraternity in the use of rudimentary basic ICT applications such as email and VoIP services.

**6. The New Constitution** to be put up Pronounced by Mr Nagananda Kodituwakku

6.1. Mr Nagananda Kodituwakku also has pronounced to put up proposals to enact a new Constitution. It is quite timely if it aims to address Critical Issues enfeebling the current Constitution and Good Governance, in particular lapses aforesaid at 4 above. The most critical of these are the (a) Right to protect abuse of Peoples' Sovereignty - the apex of all Fundamental Rights - through real time checks and balances; (b) People' Right of access to affordable and expeditious, Justice; (c) the Right of assured Professional Competence, Accountability and Responsibility of statutory Regulatory Entities - which are currently the haven of jobs for the boys - illustrious examples are the Telecommunications Regulatory Commission of Sri Lanka (TRCSL) and the Information and Communication Technology Agency (ICTA); (d) the statutory role of national and sector public goods to serve the interest of the nation's competitive markets and needs of repositories of national information systems, the local, divisional and provincial units of the center periphery chain; and (e) establishment of Lay Judge and e-Court System equipped with modern ICT tools elucidated at 5.2 to 5.5 below, to develop synergies to generate new integrative knowledge focused on resolving long overdue problems of the Judiciary.

6.2. It is a proven factor that the success of rapidly advancing disciplines like medicine, surgery, space and terrestrial communications and transport (road rail and aviation) is attributable to their creating synergies to generate new integrative knowledge for problem solving availing of ex-

pertise of multiple disciplinary backgrounds.

6.3. However, the legal fraternity of Sri Lanka has been reluctant to avail themselves of synergies of expertise of other backgrounds despite the legal principle that states "Ignorantia legis neminem excusat"; it imputes that all laws should be known by all, i.e., including all of the legal fraternity. In the "Law in crisis" Justice C.G. Weeramantry et al states that " Certain is that our laws as they now stand are subject to great uncertainties and variety of opinion, delays and evasions. "

6.4. The phenomenon of Lay Judges currently availed of by many nations, for example, Europe, Japan, Korea, China, India etc. has prevailed before the emergence of professional, legally trained judges struggled to find their place in many national legal systems. It is characterized by the competing demands of popular sovereignty and legal efficiency [cf - Lay Participation in Modern Law: A Comparative Historical Analysis Conference at the University of Helsinki, Finland, September 17-19, 2014].

6.5. Such an approach helps fostering a partnership of multidisciplinary expertise of Lay Judges and e-Court Systems with expertise of the legal fraternity, for sustainable improvement of the Judiciary Efficacy with a focus on integrated societal expectations, driven by advancing science, technology and other relevant factors, such as the environment, impact of forces inhibiting social cohesion and harmony; crime, all other forms of aberrances, rehabilitation of their offenders, etc., and their impact assessment. Outcome of a typical instance from lapse of such expertise is given at 7 below.

6.6. Another facet is its freedom from institutional pressures personal or political stakes, qualifies it to best suited to: overcome undue influences that hinder orienting the Justice Sector to be more people centric; mitigate abuse of People's Sovereignty entrusted to the legislature; dampen proneness to politicization of crime and rent seeking practices - the cause for the public hue and cry of corruption [cf. Testing Japan's Convictions: The Lay Judge System and the Rights of Criminal Defendants Arne F. Soldwedel] As Judge John Fitzgerald Molloy says the failure to address aberrant conduct has transformed the system to a perverted commerce system, serving solely the interests of lawyers and not the interests of the public.

### 7. An Instance of Flawed Jurisdiction in Sri Lanka Harsher than the Inquisition of Galileo Galilee.

An instance of a Jurisdiction issued void of multidisciplinary knowledge that deserve mention at least in brief is the Jurisdiction that upheld the flawed telecom tariff proposal (Ref DG/Misc/07) published around July 2007, prepared by a team of "THREE" attorneys of whom two are currently holding office of high status; one of them until recently was the Director General of the Commission to Investigate Allegations of Bribery or Corruption, who did not heed warnings by experts and ignored updating the "X" factor of the prescribed price cap [CPI-X]. The leader of the team was the then Director General Telecommunications (DGT) Attorney K Ratwatte, the political appointee to the post by the then Government. The DG assured the Court that the tariff prescribed in the proposal fully conforms with the court order for equitable telephone bill reduction of around 10 percent, though in reality it was not. The DG being the sector regulator, the proposal was upheld by the court.

7.1. The outcome of enforcement of the flawed proposal re-affirmed the warning of the experts. As opposed to the equitable bill reduction, it resulted in a hike in the bills of domestic users by nearly 25 percent and a drop in the bills of commercial users by nearly 30 percent. It surged a flurry of appeals by grievated helpless subscribers, newspapers then reporting their discontent of price hikes contravening the court ordered bill reduction, but the regulator Attorney K Ratwatte carried on undisturbed - much like a feudal lord dealing with his peasantry and avoiding the queries of the media.

7.2. A bold Parliamentarian volunteering to be petitioner jointly with experts Professors Kumar David and H Sriyananda filed an appeal seeking redress of the unjust flawed tariff. The latter could provide an account of the satirical nature of the events that followed. However, this appeal was dismissed by the then Chief Justice (CJ) imputing the dismissal to the appellants awaiting retirement of his predecessor as the legal inadequacy to grant leave to proceed. But that was factually incorrect. The reality was the pressure exerted from above as the Minister in charge of the Telecommunications regulator was benefitting on the lucrative income generated. The irony is that this very same CJ not only allowed an appeal against jurisdiction of his predecessor, but also reversed jurisdiction of the bench presided by his predecessor! He ordered the incumbent of a very senior post of a ministry, to tender an undertaking, to Court that he would not take up any government post in the future- to reinstate the official. The flawed tariff proposal, following the dismissal of an appeal to the court to remediate its flaws, is still operative but un-remediated and the X factor still having the value prescribed in 1991, thereby inhibiting the end user benefitting from declining costs of telecommunication technology.

'Sunday Times 2 December 2007, SLT's new tariffs - a sham: downloadable at: http://www.sundaytimes.lk/071202/FinancialTimes/ft342.html

'Daily News 14 December 2007, Business Letter: Reduction of tariffs by Sri Lanka Telecom - A misnomer: downloadable at: http://archives.dailynews.lk/2007/12/14/bus40.asp

'Sunday Island 19 October 2008, SLT and TRCSL have together Cheated the Subscriber

7.3. Thus, the aforesaid flawed Jurisdiction is far more atrocious, fallacious and egregious than the inquisition of Galileo Galilee by the Catholic Church for advocating Copernican heliocentric theory, however its benefits to global community at large was not stalled by the inquisition. Furthermore after 350 Years, the Vatican finally declared Galileo was Right, closing a 13-year investigation into the Church's condemnation of Galileo in 1633. Hence, it is most appropriate to reopen the appeal previously dismissed by the then CJ to redress the benefits deprived to the telecommunication users.

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