

SUB THEME 05

Democracy and Citizenship in the Era of Technology

Exploring Judicial Narratives: Need for Digital Law Archives

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Abstract

Judicial opinions reveal the application, interpretation, and evolution of the laws applicable to all citizens of a nation state. Public access to these interpretations allows citizens and scholars gain insights into law in context. Public access to judicial opinions also facilitates transparency and accountability, which are cornerstones of a democracy, and better understandings of the rights of the individual *vis a vis* the role of the state (Genovese, Luker, and Rubenstein, 2019). Therefore, a judicial archive is imperative to a democracy to ensure the rule of law through transparency, and the protection of individual rights.

This paper argues for the conceptualisation of the courts of record¹ in Sri Lanka – the High Courts and appellate courts – as a publicly accessible judicial archive through better technological interventions. In addition to their legal mandate, these courts are already archival repositories as they contain the judgments and case files of all decided cases. The evolution of the law and its sociocultural dimensions can be studied through these archives. However, the lack of a centralised, digitised, and publicly accessible archive compromises accessibility and limits scholarship, especially in multidisciplinary studies of the law.

Through a discussion of the insights that could be gained from interdisciplinary studies of the law, specifically through the law and literature nexus, this paper argues for the better use of technology to create a digital judicial archive. Thus, creating a digital public repository has the

¹ The High Courts and appellate courts in Sri Lanka are required to maintain all judicial documents related to a case, including but not limited to trial transcripts, evidentiary records, and the judicial opinion.

potential to mediate between the judicial system and upholding of democratic rights of citizens by offering better accessibility, facilitating the consistent application of the law, and providing better opportunities for research and further knowledge.

Methods and Methodology

In attempting to demonstrate the insights that could be gained from the study of the law through a literary approach, this paper offers the narrative analysis of the judgment of a murder case in which the doctrine of provocation was submitted as a mitigatory exception. This case study was selected for the rich detail it offers to the study of both the relevant law and sociocultural dimensions revealed in its discussion, and is part of a larger, ongoing doctoral study. A desk-based search of available legal repositories was used to gain access to the judicial opinion, of *Naide and the King* (1951), which is a judgment of the Court of Appeal.

As a qualitative study, a narrative analysis of the judicial opinion was conducted to gain insight into the sociocultural dimensions of the trial, focussing on the narratives constructed and deployed within the trial, and how they shape and are shaped by sociocultural norms and ideologies. The analysis was conducted through a feminist lens, highlighting gendered concepts, language, and stereotypes within the text to explore the “nuances and interrelationships among aspects of the (text) ... to better understand other related situations” (Wertz, 2011, p. 239). This analysis was framed by the two research questions: how the arguments in the trial are structured narratively as stories, and how the competing stories in the trial construct particular gendered identities.

Literature Review

The literature reviewed for this study included literature on judicial archives; the interdisciplinary study of law and literature; and the relevant law.

Genovese, Luker & Rubenstein (2019) highlight the archival function of courts of record, arguing that while being adjudicative

institutions, courts of record also possess a repository of judicial documents that have been historically produced. They argue that judicial archives can reveal the “layers of meaning” through which insight can be gained to “interrogate the operation of legal authority and procedure” (p. 9), and the evolution of the law. Binder and Weisberg assert that while a study of the law interprets a law and its applicability, it must also explore the law in context, taking into account sociocultural customs, norms, and identities.

Narrativity is common to both the law and literary fields. Thus, using literary techniques to study the competing stories offered in courts offers a nuanced understanding of the law in context. Therefore, an interdisciplinary exploration of law and literature lends itself well to gain sociocultural insights into the law in context. This paper first briefly discusses the evolution of this interdisciplinary field (Posner, 2009; Binder & Weisberg, 2000). Secondly, it discusses the sociocultural meanings embedded in the judicial system (Cover, 1986) and the role narratives play in trials (Anderson et al., 2005). Finally, the literature review discusses the applicable law, locating it within Sri Lanka’s obligations under CEDAW to ensure the elimination of discrimination against women through legislative enactments.

The study of sociocultural dimensions, such as gender, of Sri Lankan law is limited in current scholarship. The existing scholarship include a study of rape trials (Abeywardene, 2016), women’s access to justice (De Mel and Samararatne, 2017), the legal mechanisms available to survivors of conflict-related sexual violence (Medawatte, 2020), and the gendered discourse of trials (Kodithuwakku, 2022). This paper asserts that a primary reason for the scarcity of research in this area is due to the inaccessibility of judicial narratives. Therefore, this study attempts to contribute to this gap by arguing for the conceptualisation of a judicial archive, through the intervention of technology such as digital archiving and AI, to better facilitate study in interdisciplinary fields involving the law.

Discussion

The law applicable to the case study explored here is on the mitigatory exception of grave and sudden provocation (S. 294), detailed in the *Penal Code of Sri Lanka*. In *Naide and the King* (1951), the Court of Criminal Appeal examined a claim of misdirection on the law by the trial Judge to the jury. The appellant (the accused) had fatally stabbed his sister-in-law (the victim). The case facts given at the trial comprised the ‘stories’ of the victim (through her dying deposition) and accused. At the trial, the accused was convicted for murder. In the appeal, the majority of a three-bench panel dismissed the appeal.

Judicial opinions offer insight into how a jury/Judge draws on sociocultural norms and ideologies to make sense of the competing stories offered at a trial. The analysis of the contrasting stories offered in *Naide and the King* (1951), represented in the judicial opinion under study, reveal patriarchal concepts related to men’s right to possess women’s bodies, women’s roles of domesticity, and stereotypical gender roles. The defence’s narrative positions the individuals in stereotypical gendered roles, with the accused as breadwinner and the victim located within the domestic space, while the prosecution’s narrative reflects gendered assumptions of sexual possessiveness. Such positioning hails the performativity of gender (Butler, 2007), and imagines a ‘deviation’ by the victim from her (gendered) domestic role to argue the excusatory nature of the accused’s deviation from the law (murder). Therefore, both stories are gendered in how they reflect sociocultural ideologies of the ‘place’ of ‘men’ and ‘women’ in ‘his world’.

In convicting the accused, the High Court rejected the accused’s argument. However, the judicial opinion of that court is available only as a hard copy at the High Court in which the trial took place, making access to

it difficult. Further, access to an ‘expanded archive’² of that case would offer insight into how the stories offered at the trial by the parties were constructed and shaped, deployed, and received by their audience (jury/Judge). Such access would offer an opportunity for a more nuanced understanding of the sociocultural dimensions of the law and the complexities of storytelling in courtrooms.

This paper details the significant limitations and difficulties posed in attempting to gain access to judicial opinions via existing digital legal repositories. While there are multifaceted methods of accessing reported judgments, thematic and keyword searches remain to be very limited and unreliable. More significantly, currently, there is neither a centralised nor digital repository of the judgments of the High Courts – where the majority of criminal cases are concluded – and their judicial opinions can only be accessed at the relevant court with the case number. This lack is a substantive limitation for the study of judicial opinions as it often confines scholarship to only reported appeal cases.

Conclusions

The case study analysed in this paper revealed patriarchal concepts embedded in the stories offered by the competing narratives at the trial, while the individuals involved were positioned in stereotypical gendered roles. Thus, an exploration of judicial narratives, through their making of plausible and coherent stories, offers insights into the sociocultural dimensions of the law and the complexities of storytelling in law.

The multifaceted method of accessing reported cases, and difficulty of accessing High Court cases, severely compromises the public’s access to judicial opinion, and limits scholarship. The High Court’s judicial opinion on the case study being unavailable in a centralised/digital repository limited the further study of this case. Therefore, this paper concludes by

² Here, the term ‘expanded archive’ is used to mean all documents relevant to a legal case, such as the opening and closing statements of the prosecution and defence, transcripts of the proceedings, and the judgment.

suggesting the use of technological advancements for the archiving of all concluded criminal cases to better facilitate accessibility of data for further, in-depth, and nuanced study of the evolution of the law in context and its sociocultural dimensions.

By conceptualising courts of record as a legal archive in Sri Lanka, this paper seeks to encourage a critical exploration of judicial records and narratives as not only repositories of the law but also as a source through which insight could be gained on sociocultural dimensions that shape collective history and identity. A digital legal archive would offer better accessibility to judicial narratives for citizens, law professionals and scholars, and encourage further multidimensional scholarship of law and justice.

Keywords: *Archive, Gender, Law, Literature, Narratives*

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