

VI. Legislation in Sri Lanka

The legislation to safeguard IPR and solve issues that can emanate in Sri Lanka can be seen added to the basic laws of the land and the ordinances that bring into existence those institutions. Since all the deposits in the National Archives, other than those that had been deposited by individuals or institutions with specific restrictions, are public domain and the public has the legal right to gain access to them. But in the case of individual and institutional deposits, access is determined by the conditions laid out in the agreements signed with the donor. Hence, instances leading to the emergence of IPR issues cannot occur.

The Department of National Museums was also established by a mandate given by an act of parliament and necessary legal precautions were included to guard against misusing, pilfering, and even replacing with fakes. However, not everything can be considered fool proof, and therefore breaches can occur. Yet it can be conjectured from the provisions laid out that no IPR issue can occur in respect of artefacts in the custody of the DNM. This is primarily due to the fact that they are meant to be on display for the public, whose rights to copy an element or create a new one cannot be denied since the artefacts themselves are either copies or replicas of the things in use in society.

Though many appear to be of the view that the concept of IPR is not familiar to Sri Lankan society, the gamut of legal protections provided to safeguard the rights of the creators and the authors of ICH-based work is considerable. The rarity of testing the strength of the law in the local context may possibly convey a misunderstanding that Sri Lanka does not have a strong legal framework to deal with such issues. A very clear account of the extensive legal precautions that form the legal enactments associated with establishment of various institutions had been submitted to the ICHCAP along with the Sri Lankan Report on the Field Survey of ICH Safeguarding Efforts in the Asia-Pacific Region submitted by this same institution (NLDSB) in December 2011.

Since the copy of the final report of the project referred to above is already within the reach of the coordinator of this project may be it is sufficient, to avoid all duplication, to quote the exact references to the relevant material for the convenience of those who matter.

1. Safeguard System and Policy

National laws and several acts are:

- 1) Intellectual Property Act No 36 of 2003
- 2) Antiquarian Ordinance No 9 of 1940
- 3) Cultural Property Act No 73 of 1988
- 4) National Archives Law No 48 of 1973
- 5) National Museums Ordinance No 31 of 1942
- 6) National Library and Documentation Services Board No 51 of 1998
- 7) Town and Country Planning (Amendment) Act No 49 of 2000
- 8) Tower Hall Theatre Foundation Act No 1 of 1978
- 9) Arts Council of Ceylon Act of 1952

In addition to the institutions covered in the survey report, this report covers several more institutions. The legal ordinances that provide the basis for their existence have very remote bearing on IPR issues and hence are not attached. Among these institutions are the following:

- Folk Arts and Crafts Centre.
- Sri Lanka Broadcasting Corporation.
- University of Performing and Visual Arts.
- Central Cultural Fund.
- Department of Cultural Affairs.

Except for the Department of Cultural affairs, all the other institutions in this last list have no connections with IPR issues since their duties do not cover any aspect related to areas liable for such issues. On the other hand, the Department of Cultural Affairs has a role as a mediator in respect of the protection of the rights of the artists since they consider the department as the one institution responsible for looking after them.

2. Legal implications

An attempt was made to obtain the views of eminent legal personalities in the field of IPR to ascertain the validity of the arguments put forward by the scholars who were interviewed. Not all were prepared to express views in a haphazard manner as they saw it, but a few others volunteered to provide their personal opinions. With much thanks to them we were happy to benefit from their generosity of sharing some of their views with us. What transpired at these discussions was the fact that Sri Lanka has a very strong legal framework to cope with the modern issues of IPR, and many matters

have been resolved with ease since the legal system provides the necessary background. Several well-known cases were mentioned to prove the point that any infringement will go punished if the aggrieved party is prepared to go before the courts.

However, the same thing cannot be said of the protection given to the ICH of the traditional society. On the one hand, we cannot avoid agreeing with the views believed to have been expressed by the exponents of the local arts and crafts that the traditional arts creations have no individual or even family or group owners since by necessity it was intended for the benefit of the whole society or the community and was never intended for personal glory. Therefore, there is no one to be considered as aggrieved, and hence no one to make a complaint. In fact, the aggrieved party is the community as a whole whose only representative is the state, and hence the right to rectify any injustice lies with the state. On the other hand, there is no solid example to be shown as the ideal model to follow as has been mentioned by several artists themselves in case we are to go to courts to fight a legal battle. Yet, there is much validity in the argument that the real value and cultural significance of a creation belonging to traditional society lies certainly on the relevance for the occasion and the purpose and the intended message to be communicated. Hence, any infringement can be interpreted as an attempt to defile and vulgarise the artistic creation of that traditional society. But the difficulty will be the possibility to convince the legal profiles of the validity of the argument.

However, what we can consider the most powerful weapon to be used in protecting the sacredness and serenity of the creations of the traditional society is the voice of the people who are the real owners as well as the custodians of the ICH. If any creation made out of or in association with any creation of traditional society is to survive in the society, it will have to get approval of the people who are the givers of the patent rights to the creations of the society. If they reject it, then it does not have the people's approval, and if survives, then it does have approval and will remain as new creation. One may see that this public approval will be even more powerful than the legal opinion though we have to accept that we are bound to respect the law. What solution we can find is to motivate the lawmakers to amend the legal frame to suit the wishes of the people. Here we cannot be acting in isolation since we are living in an international era and are bound to respect the international law as well. Therefore, anyone will realise the need for an international legal forum to thrash out some of the problems that have cropped up only in the recent past, owing to the new situations arising in the world at large.