

Conclusions

Author suggests that relevant provisions from prevailing statutes those are good and retainable should be drawn and codified as a single “**FOOD ACT**” for Sri Lanka. It is also recommended that the 7 guidelines identified by the UN (mentioned above) should be incorporated into the new Sri Lankan Food Law that has a balance between consumer rights and manufacturers/traders’ freedom while encouraging fair competition.

It is submitted that the following salient features should form part of the new Food Law:

1. Authorities should conduct consumer education in both cities and urban areas to educate consumers of their rights.
2. Methodical inspection should be carried out to ensure compliance of the law. Effective spot-fine system should be adopted which will serve two purposes.
 - i. It will save time of the parties that may be otherwise spent on inquiries and/or litigation.
 - ii. Revenue will be collected that will help to carry out suggestion No.1 stated above.
3. Formulation of Consumer Redressal Agencies at district level and Consumer Court at provincial level, based on Indian Law to give easy redress to the aggrieved consumer.
4. Media and consumer organizations should be encouraged to emphasize “right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education, and right for a healthy environment”

Protecting indigenous knowledge in Sri Lanka: Legal issues and challenges¹

Background:

Of the various types of intellectual property, the one occupying central focus in the Asian region in general, as well as Sri Lanka in particular, is the protection of indigenous knowledge, such as folklore and traditional knowledge. These items are essentially owned by communities, many of them traditional. As such, they find difficulty in obtaining protection in a regime that is geared almost exclusively towards protecting individual rights. Further, the groups to whom they belong are generally unaware of their great commercial value, as well as of the legal rights they possess with regard to them. This results in two unfortunate consequences: either this knowledge will be unscrupulously stolen from them with little or no reimbursement, or the vast store of knowledge, culture and healing will be confined to the indigenous community, with little chance of being used for the greater good of the larger community.

It is submitted that TRIPS has not fully appreciated the problem of placing an essentially group-owned resource within a framework of individual-type protection. This has led to

¹ Naazima Kamardeen, Lecturer, Faculty of Law, University of Colombo

various misconceptions about the TRIPS agreement itself, with many arguing that TRIPS does not seek to promote the rights of developing nations. In reality, what seems to have occurred is that many developing nations have not had a sound conception of how to protect indigenous knowledge themselves, and this is the root of the problem.

This study aims to identify the key issues that surround the debate of protecting indigenous in Sri Lanka, and to propose meaningful steps that could be taken towards increasing the benefit shared by all stakeholders.

Methods:

The study was conducted on the following lines:

- **Identification of the importance of protecting indigenous knowledge, not only from a financial perspective, but also from the perspective of the cultural identity of peoples.** This segment explored the different types of indigenous knowledge that exist in Sri Lanka, such as Traditional Knowledge (TK) and folklore, and the profile of the communities to which they belong. It ascertained the importance of such knowledge in the lives and practices of those communities, and the potential economic implications of the exploitation of such knowledge.
- **Analysis of the international legal regime that operates to protect TK and folklore.** Here, the important international and regional covenants that seek to protect various aspects of indigenous knowledge was studied. The WTO framework as well as its Trade – Related Intellectual Property Agreement (TRIPs) was examined in great detail to establish the current international position regarding the protection of indigenous property.
- **Description of the current position of the local law on the protection of indigenous knowledge.** The operative law at present is the Intellectual Property Act No. 36 of 2003. The provisions of this Act as well as any other statute that dealt with the protection of indigenous knowledge was analysed to ascertain the level of protection offered
- **Analyse the efforts taken by other countries with large amounts of TK and folklore (such as India) to protect them, and consider the success of these initiatives.** Comparative analysis of other jurisdictions offers helpful insights as to how one may protect resources in one's own country. The examples obtained from our largest neighbour were particularly useful in this field, as India has waged many battles (both legal and diplomatic) in order to protect its indigenous knowledge.
- **Based on these comparative studies, propose a formula that might be workable from a domestic point of view, for the effective protection of indigenous knowledge in Sri Lanka.** It is proposed to suggest changes to the law, its application or to its enforcement, so that communities that are repositories of these stores of knowledge can become partners in the benefit-sharing process that takes place once these resources are commercially exploited.

Results:

The following results have been obtained:

- **Indigenous knowledge and the importance of protecting it:**

Various types of indigenous knowledge are present in Sri Lanka, with its rich and varied history. These cover areas like agriculture, health, natural resource

management, biophysical treatments, and even weather forecasting². Though they initially belonged to groups such as the Veddahs, Rodiyas and Gypsies, they gradually found their way into mainstream society and were later found in the hands of learned people of the villages³. Today, they are usually the first choice for people living within the traditional system, specially where health is concerned. TK remains as a largely untapped source of economic wealth, as the villagers generally do not charge a fee for their efforts; rather, the people reward the local physician with whatever they may have at the moment.

- **The legal regime protecting TK and folklore:**

The Convention on Biological Diversity attempts to both recognise the link between traditional communities and biological resources, as well as to call for equitable benefit-sharing in this area. The World Intellectual Property Organisation (WIPO) has also conducted some training programmes in this area, but nothing concrete by way of protection has been arrived at. In contrast, the more effective forum, which is the TRIPS agreement, does not have any provisions relating to the protection of indigenous knowledge, or the rights of those communities. The local law, embodied in Act No. 36 of 2003, is also silent on the issue of traditional knowledge, which is disappointing as Sri Lanka could have used the *sui generis* provisions of Article 27 of TRIPS to draft provisions on this subject that is so important to its economic as well as cultural growth. The Ayurveda Act, No. 31 of 1961 also does not provide any measures for the protection of even the medicinal plants used in Ayurveda. The Ministry of indigenous medicine is preparing a draft on access to traditional knowledge relating to the use of medicinal plants⁴ but this is not operational as yet.

- **A comparative analysis of the efforts taken by other countries:**

Though India does not have a specific law that deals with the protection of indigenous knowledge, it has several pieces of legislation that contain provisions that can be used to promote traditional and indigenous knowledge⁵. Some of these laws also contain provisions on the concept of benefit-sharing. India has also introduced the Traditional Knowledge Digital Library, which will make it easier to track piracy⁶. Further, India has successfully challenged the grant of patents for several products in Western countries, which have sought to incorporate its traditional knowledge⁷. This is due to the vigilant role played by civil society and the research community in protecting traditional knowledge.

² Hemanthi Ranasinghe, **Indigenous/traditional knowledge in Sri Lanka**, available at www.worldbank.org/.../Status%20of%20IK%20in%20Sri%20Lanka.ppt, accessed on 2/5/2010

³ *Id.*

⁴ *Id.*

⁵ The Patents Act, Plant Variety Protection and Farmers Rights Act, Biological Diversity Act, 2002 and Geographical Indication of Goods (Registration and Protection) Act, 1999 have provisions that can be utilized for protecting traditional knowledge.

⁶ Available at <http://www.tkdil.res.in/tkdil/langdefault/common/Home.asp?GL=Eng>

⁷ Notably, the turmeric and neem patents. See the discussion at www.law.ed.ac.uk/.../67_varkeytraditionalknowledgeinindia03.pdf

Conclusions:

Sri Lanka could benefit greatly from the commercial exploitation of its traditional knowledge, specially if the benefits are to be shared with the communities that own them. However, it needs to introduce certain legislative measures to enforce the protection of its traditional knowledge, without which the commercial exploitation of such knowledge would become meaningless. The most appropriate forum would be the Intellectual Property Act. Further, local research and collaborative partnerships need to be established and strengthened so that the indigenous communities could team up with local companies and work out strategies that could be beneficial to all parties.