

PROTECTION OF CULTURAL AND NATURAL HERITAGE OF SRI LANKA: A LEGAL PERSPECTIVE

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Introduction

The concept of protecting cultural and natural heritage is of vital importance in the modern environmental law. Even though the origin of this concept cannot be traced back to the Roman era or any other environmental law principles it has gleaned significant value as a late -comer to the pantheon of environment law. In view of that, it is important to examine the reason why and to what extent the natural and cultural heritage is protected as a part and parcel of modern environmental law. Of course, the idea of the preservation of natural and cultural heritage has entered into the international plane with the adoption of the 'Convention Concerning the Protection of the World Cultural and Natural Heritage in 1972 (CCPWCNH) (hereinafter refer as 'the Convention') by the United Nations Educational, Scientific and Cultural Organization (UNESCO).¹ As illuminated by the preamble of 'the Convention',

¹ The Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the general conference of United Nations Educational, Scientific and Cultural Organization (UNESCO) at its seventeenth session Paris, 16 November 1972.

"...noting the cultural and natural heritages are increasingly threatened, considering the insufficiency of national level protection due to various reasons and recognizing the destruction of world's heritage as affecting all nations and establishing an effective system of collective protection of world heritages outstanding universal value..."²

As discussed above, the international protection on cultural and natural heritage has been embedded into a single document through this Convention. It is clear the Convention is based on the concept of 'State Responsibility'. The destruction of natural and cultural heritages can occur not only through traditional causes of decay, but also by changing social and economic conditions. Therefore, 'the Convention' brings the State parties together to preserve cultural and natural heritage of human being. Furthermore, it provides fruitful guidance to the stakeholders by facilitating the technical support as well as institutional support for the protection of cultural and natural

² See the preamble of Convention Concerning the Protection of the World Cultural and Natural Heritage 1972.

heritage.³

Sri Lanka being a country with a rich cultural and natural heritages, and a signatory the 'the Convention' has a primary obligation to follow the guidelines enshrined in 'the Convention'. This study, therefore, investigates the adequacy of the current adequate legal framework for the protection of natural and cultural heritage of Sri Lanka. It also makes suggestion to enhance the domestic legal regime viewed through the experience of other jurisdictions in relation to the cultural and natural heritage.

Methodology

This study is a normative research and thus based on literature review. Moreover, primary and secondary sources are used. Comparative legal research and analysis have also been used with regard to selected jurisdictions.

Results and discussion

Firstly, it should be mentioned that the protecting of natural and cultural heritage is not a modern or imported concept in the Sri Lankan context. If one looks at historical records, it is clear that our forefathers had a certain understanding in relation to the preservation of cultural and natural heritage. The best evidence can be found from *Mahawamsa* (the ancient chronicle) which explains the advice of Arahata Mahinda to King Devan- mpiya Tissa, who ruled Sri Lanka from 247 BC to 207 BC, when he met the former at the Missaka Pabbatha in Anuradhapure, the ancient city..

³ Article 4,5,6 and 7 of 'the Convention'.

*"O great king, the birds of the air and the beasts have as equal a right to live and move about in any part of the land as thou. The land belongs to the people and all living beings; thou art only the guardian of it"*⁴

Secondly, it can be noted that the existing legal framework on protecting natural and cultural heritage of Sri Lanka, is lagging far behind as compared with the other jurisdictions i.e. the New Zealand and India. Obviously, the protection of the Sri Lanka cultural heritage is provided by the Antiquities Ordinance No.09 of 1940, as amended by 24 of 1998 and Treasure Trove Ordinance No. 18 of 1887. The natural heritage is protected by the Natural Heritage Wilderness Areas Act No. 03 of 1988. The National Environment Act No.47 of 1980 stipulates the protection on both cultural and natural heritage.⁵ Unfortunately, the current legal framework for the protection of natural and cultural heritage of Sri Lanka has so far been failed to deliver desired result of adequately protecting natural and cultural heritage in the country because of some loopholes in the legislation. Furthermore, the institutional power-overlapping, political intervention, lack of social awareness and some delays in funding services has caused to dilute the substantive rules enshrined in the written laws.

Thirdly, the principles embedded in the 'the Convention', have so far not fully

⁴ *The Mahawamsa*, Chapter xiv.

⁵ Part 04 C of the National Environment Act (EIA process)

incorporated into domestic legal framework of Sri Lanka. Due to the dualistic approach taken by the Sri Lankan judiciary, it has become somewhat difficult to incorporate international law principles and norms without enacting an enabling legislation from by the legislature. Therefore, Sri Lanka as a country with a rich cultural and natural heritage should be eager to establish sufficient and worthwhile legal framework on protecting cultural and natural heritage.

Furthermore, an analysis of the case law jurisprudence, there are several cases which blended the idea of protecting cultural and natural heritage as provided in the international legal instruments. As lucidly explained by Justice Amarasinghe in *Bulankulama and Others v. Secretary, Ministry of Industrial Development*⁶;

"...unless development activities in areas like this project are accompanied by proper EIA studies and mitigation of the archeological resources that will be damaged, vast numbers of sites-in fact much of Sri Lanka's unrenovable cultural heritage and the row data for all future studies on ancient Sri Lanka-will be destroyed without record..."

Finally, it can clearly identified that only the judicial pronouncement is inadequate for providing better protection on cultural and natural heritage. The legislative process should also be effectively used to address ongoing issue of protecting cultural and natural heritage. In conclusion, it could well be argued that harmonizing the legislative process in line with judicial

⁶ SC Application No. 884/99, (FR) Unreported.

vision on protection of cultural and natural heritage will be the right way to address this contentious issue in Sri Lanka.

Conclusions and recommendations

Even though the law relating to protection of cultural and natural heritage has been proliferated in international plane; Sri Lankan law is still incubating with several weaknesses as discussed above. Therefore, it is suggested that Sri Lanka should enact a single piece of legislation which directly enable the application of 'the Conventional' provisions into domestic law in relation to environmental law principles. Thus, it is argued that that the government of Sri Lanka has to develop a comprehensive legal and institutional framework relating to the protection of cultural and natural heritage while legislating substantial aspects of 'the Convention'.

References

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