

### III. Expert Views on IP Issues

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The survey of the opinions held by eminent personnel as well as ICH bearers started with an interview with three representatives of the younger generation of artists. They were

- Mr Kushantha Ratnayake (Painting Instructor)
- Mr. A.G.R.J.K. Attapattu (Dancing Instructor)
- Ms C.Nadeesha Nilmini Fernando (Dancing Instructor)

They graduated from the University of Performing and Visual Arts in Sri Lanka and are now engaged in disseminating the knowledge they had acquired to their next generation under the auspicious of the Folk Arts and Craft Centre (FACC), a state-sponsored institution under the purview of the Ministry of National Heritage. They each belong to different disciplines of aesthetics—namely, low-country dancing (dance traditions of the maritime areas of south and western Sri Lanka), Sabaragamuwa dancing (dance traditions of the interior to the south of central highlands), and painting.

They are of the opinion that ICH does not belong to any one individual or family but instead belongs to society as a whole and hence is the property of the people. As such, everyone has the right to make use of ICH but without harming its fame and value. Anything new that is based on the old model can be called a new creation and carried on until the people who are the genuine owners of the patent rights deprive the creation with the right to survive by rejecting it.

This view is made clearer when one tries to ascertain the original form of a creation that is declared to be the ideal form or the model to be followed. No traditional creation has ever been ascribed to one single person, and no one single person has ever claimed authorship to such creations other than some of the literary works. Therefore, there is no rational basis for anyone to demand others to conform to any set pattern or design when issuing their own creations, especially when there is no one who can decide the authenticity of the original. None of the folksongs or poetry has the prescribed melody and meters to follow

or musical notes to adhere in singing. The only relevant factor to be considered would be the purpose for and context in which it had been created and hence the sensitivity intended to be communicated. A song sung to convey sorrow and grief may not be suitable to be copied in a song conveying love and lust. On the other hand a song intended to instil a sense of religious sanctity and honour may be very inappropriate if used to express love and lust or violence and hatred. Such a situation may amount to the vulgarisation or the corrupt and crude misuse of the creation.

Most senior and recognised artists, some of whom hail from well-known families of reputed artists, agreed fully with the views expressed by these juniors with regard to the concept of ownership in traditional society that continues up to now. They claim that it is further proved by the fact that the creators in our traditional society never created anything for their own glory. They wanted them to be for the benefit of the society at large, becoming a prized possession of the community. The concept of private ownership of these creations is certainly an alien introduction that can be identified as another harmful introduction of the west where social values such as cordial personal relationships and common ownership never had relevance in their society. Even up to now in our society, the skills and creativity of our people have never been claimed as personal property, and hence tradition-bent artists never bothered much about them, and they do not try to litigate against using their creations by others so long as they do not vulgarise or corrupt the original intentions and purposes of the creations. This is one of the main reasons for the lethargic attitude adopted by the local people on issues like IPR. The examples adduced by them happen to be even more interesting.

In the instance of native healing ceremonies, there are numerous decorative creations that undoubtedly would have qualified for patent rights had such a concept been known at the time. The arena prepared for the occasion is gaily decorated with four decorated compartments constructed at an elevation at the four corners of the arena to accommodate the lamps to be lighted in honour of the deities in control of the four directions of the world as they believe. These like any other decorations happen to be unique creations depicting the skills of the creators. However nobody has the patent rights for these, instead everyone who has ever been assisting in the creations takes with them the knowhow to create these decorations anywhere else when the need arise. But no one has ever quarrelled over rights.

Same thing can be said of the very attractive and architecturally skilful construction made to accommodate the Buddhist monks for the chanting of

Paritha, a common religious ritual performed in Buddhist homes for invoking the blessings on various occasions. No one claims for the ownership of these creations and no one objects to anyone making use of the creations since they are considered belongings of the community who would take full care for the elements' safety and survival. This is true with all the other creations of any field in traditional society.

However, they were of the opinion that, since we are now living in a world different from the traditional world of the past, care has to be taken so that no one infringes on the rights of the others as protected and guaranteed by universal laws that take precedence over local legal systems. They argue that, according to the accepted system prevalent in the present day society, mechanisms have been introduced to determine the ownership of the creations, prevent any misuse of them, impose punishments for the wrongdoers, and even educate the communities on the accepted rules and regulations they are bound with. Still they are doubtful about the success of these measures and argue that the degree to which these rights could be safeguarded is questionable. They argue that there is no one single authority within the country to regulate the rules and regulations where as there is a multiplicity of institutions engaged in the maximum use of the ICH. Among them are the electronic media, entertainment industry, writers—including music and lyric writers—and even antique dealers. This is a clear indication that everyone is keen to see the rights guaranteed for which a single lawful authority mandated to regulate them is anxiously awaited.

Also doubtful is the efficiency of the mechanisms introduced to thwart these infringements mainly because the infringements are too common and unnoticeable and because a heavy staff of detectors is required, it is surely a dream, according to the views of the most eminent personnel interviewed. A literary creation has an author who would take the trouble to give his or her work out in print with his name and details to prove his authorship and the ownership. Therefore, the chances of infringing on the rights of the author appear to be slim, but it still occurs but most cases go un-litigated. If so how can other creations, such as songs, be saved from being misused, they ask. This may appear to be true with regard to ICH, but there again the social sanctions against the vulgarisation of the community-owned heritage will help to save them from infringements.

To be fair by them and to prove the sanity of their thoughts and arguments, it must be said that they are of the opinion that, since the modern creations have their owners who can protect them from being misused, the traditional heritage, which has no owner other than the general public and society, has to be

protected and safeguarded against any misuse and corrupt use at whatever cost by society and the state who is the official representative of the people. It can be achieved only with the intervention of the different authorities who feel truly for the value and worth of this heritage. Yet, that can be achieved only by educating the public and making them aware of the supreme value of the irreplaceable heritage that is on the verge of destruction and disappearance, owing to the neglect by the people who are the actual owners of the heritage. Moreover, educating the general public on these issues should be taken as an investment for the future.

The eminent scholars, therefore, emphasise that since the mechanisms are easily available at present to identify the ownership, economic value, and the sentimental attachment of the creator to their creations of the past, all precautionary measures must be taken and adhered to for safeguarding the rights and benefits of the true owners of the creations that serve the people of the country.

### **1. Professor Ranjith Fernando, Head of Department of Applied Music, University of Performing and Visual Arts, Sri Lanka**

Professor Ranjith Fernando, Head of Department of Applied Music, University of Performing and Visual Arts, Sri Lanka, is a musicologist who is engaged in field research and laboratory research on traditional folk songs. He expressed his views succinctly and made the following points.

The University of Performing and Visual Arts has Research into Traditional Folk Songs and Music as a principal subject of its syllabus, and a lot of work has been done by the unit in charge of this research work every year ever since it was established in 1992 in the Institute of Aesthetics Studies (IAS) (then affiliated with the University of Kelaniya). The activities were then funded by the Norwegian University Association. Prof. Kjell Kjelstad from Oslo University and the Research Officer at the time Mr. C.de S. Kulatilaka were instrumental in establishing the unit.

Among the activities the unit was involved in were the following.

- 1) Collecting of folk musical and dancing materials, associated activities taking place in the modern society and case histories of prominent artists in the field of music and dance.
- 2) Documenting and archiving such materials.
- 3) Using modern methods to evaluate and analysis of traditional music and publishing bulletins in which findings are given publicity.

- 4) During the first two years, an exchange programme was conducted between students and teachers who belonged to the Oslo University and the IAS.

The academic work of the department and the unit were functioning well with the assistance received from various sources. In 2011, an ethnomusicologist of great fame, Mrs Ami Katharine Jairasabuoy from America, visited the university and donated the famous Bake Collection, which included valuable information regarding folk arts that prevailed in Sri Lanka around the 1930s. This unit has the fortune of possessing much of the ICH-related data and archives obtained mainly through fieldwork and donations. These materials form the backbone of the teaching aides used in the university for students of the Music Department. Realising the great value of the collection for the students and scholars access to the materials had been made easy for both students and scholars to derive maximum benefits in the hope that field of traditional music will be richer and make our ICH even more popular. No charges are levied, but permission is not given for taking away or getting recorded materials that bear cultural significance. The university holds the sole rights for everything preserved in the research unit. Since gaining university status in 2005, another research and information centre has been established by the faculty of dance and drama.

The university has not yet met with any serious problems related to ICH, and there may not be the opportunity for significant problems in the future since the institution is the only one dealing with the dissemination of knowledge, which includes knowledge about ICH and IPR issues. It is better to have some sort of legal framework in place because the university is directly connected with performing arts, which form the bulk of the ICH.

ICH needs protection but how it is to be achieved is not easy to resolve. There is no owner or author to take care of it or there is no one from whom permissions or rights to use the creation can be obtained. Yet, it needs to be protected since it is the peoples' property. The state is bound to protect what the people own since the people have reposed the responsibility to do so on the state as the representative of the people. Modern creations will have no threats of misuse, corruption, or piracy since the entire world is aware of the new legal provisions, and most countries are signatories to the relevant charters, so they are bound to adhere to these laws. But the problem lies with traditional ICH whose protection and sustenance has to be undertaken at any cost by all since it is an irreplaceable resource that the world cannot afford to lose. Since it is the common property of the community, the entire community

has a great responsibility of safeguarding it. No one can evade from this responsibility.

## **2. Dr. Mrs. Sriyani Rajapaksha, Head of the Department of Dance (Sabaragamuwa Tradition) of the University of Performing and Visual Arts**

Dr. Mrs. Sriyani Rajapaksha, Head of the Department of Dance (Sabaragamuwa Tradition), of the University of Performing and Visual Arts was of the opinion that ICH is the life blood of our nation, and hence, it has to be safeguarded against all possible threats from internationalisation and westernisation that appear in the guise of modernisation. In traditional society, concepts such as patent rights, intellectual rights, and ownership of artistic creations were almost unheard of and many of the surviving great old masters may not even understand the meaning of these words let alone the contents.

In our traditional society, no artist of any sort ever commercialised the knowledge or the craft he was skilled in. Nothing was practiced for monetary gains or anything ever done or created for personal glory. Everything was intended for common well-being and hence for the community at large. Without any doubt these are all imported concepts introduced to seduce our own prestigious arts and crafts. Any aspect of ICH of the traditional society could be taken over by anybody so long as it was for the common good, and no one protested against such act because the cultural creation so used was intended to be used by whomever needed it. If any creation based on a borrowed one was brought to light, it was appreciated and welcomed as a new creation and the new creator was rewarded.

Most unfortunately, we have been blindly accepting and following the western models without any concern for our own achievements. No attempts have ever been made to defend our heritage against any encroachment or even destruction carefully executed by the same old masters who once held sway on us and determined everything for us. We do not have to allow such thuggery to happen in the present context when we are enjoying equal rights with any powerful country in the world. The concept of IPR is yet another strong example to show how we have been trapped once again.

### **3. Professor Nimal de Silva, the Director-General of the CCF & Professor of Architecture in the University of Moratuwa**

Professor Nimal de Silva is the Director-General of the CCF (see above) is also a Professor of Architecture in the University of Moratuwa. He is a reputed art historian and a collector of old manuscripts to save them from been destroyed or smuggled away into foreign countries. Expressing his opinion on the subject of IPR issues in relation to ICH, he was in total disagreement with any attempt to view the indigenous culture through the foreign concepts and methodology.

According to him, in traditional Sri Lankan society, there had been nothing that was not intended for the benefit of the entire society or in other words there was nothing meant for personal benefit or glory. In such a situation, one cannot make rules and regulations barring others from using the cultural aspects created by the forefathers. All that can be done and needs to be done is to prevent the misuse and corrupt use of these aspects of the valuable heritage so that they will be cherished for future generations, the true inheritors of these creations of immeasurable value. Taking examples from the field of architecture, he emphasised that the architectural designs of the forefathers are being copied at present even by foreigners since the designs are internationally admired, but we cannot do anything other than accept the kind acknowledgements made by them and be satisfied. The house type with the open courtyard in the middle of the house (Meda midula Ge) is a classic example.

The same thing even happens in the field of aesthetics. Ancient musical tunes and rhythms are been adapted by the modern musicians but no one sees anything wrong in it as long as the new creations do not deform or defile the aesthetic value of these ancient musical creations. In the field of traditional dance, one may be bold enough to create new items, but they have to conform to the sacred aims and objectives for which our forefathers created them. A musical note intended to enhance the mental closeness to the doctrine or even the Great Teacher will be considered corrupted if used for an occasion like a feast or fiesta. The use of a solemn drum rhythm intended for conducting Buddhist priests for a religious occasion at a drink and dance party will be an unpardonable offence in the eyes of the Sri Lankans, who care for the ICH.

### **4. Mr Lionel Gunatilaka, Reputed Musician and Music Director**

Mr. Lionel Gunatilaka is a descendant from a family of traditional artists and has a true love for preserving ICH that has benefitted from the contributions

that he and his ancestors had been making towards its nourishment. Presently he is engaged in activities like dissemination of knowledge leading to the preservation of the traditional arts in association with the Tower Hall Trust Foundation, another leading institution devoted to preserving ICH of Sri Lanka. Therefore, Mr Gunatilaka was invited to express his views on the subject since it was felt that such views would be very relevant in this exercise.

To begin with, he disagreed with the very concept of IPR as defined in the Western world and thrust on us during colonial rule. He was of the view that our cultural background is totally different to the situation in the west and hence non-recognition of this difference makes it one sided. The common ownership that is promoted in our culture had compelled our ancestors to harness their skills to bring out creations for the well-being of the community as a whole. In the case of folklore and folk songs, there is no accepted supermodel for others to follow. Hence no one can say any adaptation or even the repetition of the creation in a manner he or she is capable of is right or wrong or a misuse if not a corruption. However, in the case of modern society, artists are aware of their rights and the responsibility in safeguarding those rights since the western concepts have taken root here. Therefore, the problem faced by the ICH will never be experienced by the present-day owners and authors.

However, one cannot overlook the urgent need to take maximum precautions to guarantee that the ICH will remain unpolluted and survive eternally for the benefit of generations to come, for them to draw inspiration to deliver new and meaningful creations in the future. This can be achieved through several means. First, the people have to be made conscious about the value of what they had inherited from their forefathers. The enormous damage inflicted by the colonial regimes in our part of the world is the hatred infused in them towards everything of their own, and in its place, love instilled for everything foreign. The people have to be cleansed of these cancerous defilements to make them qualified to receive these insights. Second, the people have to be convinced of the utility value of all these ICH aspects that they now misunderstand, owing to their ignorance caused by the alien education and social systems. People will be attracted only by the things that have a role to play. Third, the government has to give a lead in resurrecting these by way of including them into the school curriculum, establishing institutions to foster them, and incorporating them wherever possible in the official activities such as official ceremonies and award ceremonies. Once the people absorb the spirit of the ICH, they are sure to be the flag bearers.

The protection ICH will require from the authorities is the recognition that it is the lifeblood of the nation and hence needs by compulsion to be conserved and developed as a symbol of national identity. This requirement is all the more highlighted because modern creations do not demand such attention since they are clearly protected by the law, and regulations in the modern world are well supported by international charters and agreements. Any creation from any field has an author or an owner, and his rights and dues are all guaranteed. Any breach will end up in litigation by the individuals without the involvement of the state. Hence the state is free from the burden of looking after a heavy load of responsibilities, which as a result gives the state more time to devote to ICH. In the case modern creations for example, a song has a lyric writer, music editor, and a singer, all of whom are not secret. Hence any misuse of creations can be rectified without delay. But in the case of an old musical creation, there is no one who can vouch for the correct usage if litigation occurs.

Therefore, criteria have to evolve with the help of experts to determine the best actions that can be taken. In traditional society, it is very clear that all the different artistic creations have emerged to suit the occasion and purpose for which such creations were intended. What had been created to be used in the paddy field or the place of religious activities may have a lyrics, melody, and even the expressions to suit the place, and hence, they are certainly incongruent or out of place if used in a different situation. Therefore, even if the ideal model to be followed is not available, the ideal model can be construed when those requirements are taken into consideration. This can be finally decided and accepted if some team of versatile and well-recognised eminent persons from each field can be appointed as a regulatory body.

##### **5. Prof Mudiyanse Dissanayake, Head of the Post-Graduate Unit of the University of Performing and Visual Arts.**

The survey of opinions gained much from the opportunity offered by Prof. Mudiyanse Dissanayake despite his very busy and tied schedule. Prof. Dissanayake, one of the earliest performing and visual arts scholars to qualify as a professor with a doctorate and one of the most popular and recognised as an eminent artist of excellence both here and abroad, is the Director of the Post-Graduate Unit of the University of Performing and Visual Arts of Sri Lanka.

He expressed in no uncertain terms that ICH is the soul and heart of the Sinhala Buddhist nation of which we are proud to be members. Any attempt

openly or secretly attempts to displace the ICH from the high pedestal of acceptance it is held in today must be thwarted at any cost because if it is allowed to go unchallenged, it will be the end of the unique nation that the world is fortunate to lay claims on.

According to him, there are instances brought to their notice regularly of attempts to misuse and even denigrate Sri Lankan heritage basically to destroy the very foundation of the nation. Hence there is the need to take prompt and appropriate action to stop this crime committed against an innocent and peace loving nation engaged in the honourable task of disseminating the message of Lord Buddha, which is in great demand as the world is increasingly facing insurmountable problems. Therefore any measures to protect and uphold the great wealth of ICH in Sri Lanka deserves all the support from the true lovers of both the country and its valuable resources.

The ICH in Sri Lanka displays some extraordinary characteristics worth recounting over and over again. It is not a mere series of creations or incidents in society. It is a way of life and a discipline to mould the characters in the society. Everything has a deep meaning and it is intended for some specific purpose. Ringing bells in the temples, though appears to be a normal thing, has a role to play and a message to convey. It is a handbook of communication. The members of the community understand the message conveyed by the sounds of the ringing tones and the times of ringing. They can distinguish the sounds conveying the message of time for the rituals, time for meals in the temple and even the emergency situation in the temple requiring the assistance of the people. In the same manner, the villagers understand the different meanings of the sound of the hooting and the message conveyed in the village. They distinguish between the hooting sound calling for help in domestic affairs and calling for urgent help when in distress as well as conveying of any other message. The entirety of ICH fulfils this great service everywhere and every day. Hence it is by necessity demanding the society to protect and safeguard it.

There is a problem regarding the protection and conservation of the ICH in our country as well. When we say it has to be protected or conserved, from whom have we got to protect them? It is from pirates, bogus artists, destructionists, or the enemies of the nation. It has to be accepted that our ICH has no owners or authors to make use of the terminologies of men involved in IPR issues. One may argue that the whole concept is new and alien to us, and therefore, the question has never cropped up. But it cannot be the whole truth

since there are attempted instances of trying to protect the rights of the owners. Sigiri graffiti is a classic example since authorship can be clearly seen on most of the poetry. But in fairness to our forefathers, it must be said that there had been nothing achieved for personal glory. Everything was accomplished for the benefit of the entire society or the community. Even when writing books, unknown authors had taken the trouble to say “scribed for the good of the ordinary people,” an indication that authorship has never been valued above community service. Common ownership had been the order of the day among the native community. Hence no one can prevent others from making use of these resources so long as they do not misuse or destroy them. But whether it can hold up today is the question to answer.

The claim that, in the case of traditional society, ICH lacks ideal models to follow, and hence, it is not feasible to regulate the adaptations, uses, misuses etc. is an unfounded fallacy. It is the culture and the tradition that springs out of the culture that has had established the ideal model to follow. If there had been no ideal model to follow, how could the eminent masters pass down the knowledge from generation to generation? When we were the apprentices, our mentors passed down the details of the each item from memory, and there was no one to remind the order or to prompt the words or stanzas. They had all that in memory and the students inherited the knowledge. What the masters had passed down and what their pupils passed down in turn happen to be the ideal model. The performing artists in the case of a very sophisticated ritual like Kohomba kankariya (a local ritual coming down from ancient times is world famous and is considered the foundation of the tradition of dance called up-country dance tradition.) which is full of activities and sequences receives no help or prompting from anybody since they are masters of the ritual and have the best knowledge of the complete order of the ritual to follow. That is because there is an ideal model to be followed by everybody. The same thing is true of the religious ceremony of chanting Parittha. There again, the ideal model is conveyed from generation to generation.

Therefore, he argues that in the case of safeguarding the aspects of ICH one cannot escape from the responsibility by hiding behind the easy excuse of non-availability of an ideal model to follow. How can one determine the ideal nature of the model? These creations have been produced within a cultural setup. The culture of a society is the determinant of the nature of the model. Besides that, there is an aim to fulfil in doing so. Basically, the aim determines the model since it must fulfil the aim. Thirdly, there is the place for the creation or the appropriateness of the creation for the place. A song sung by

the paddy weeding ladies in the field basically agrees with the task they are engaged in. It answers well to the aim of expressing their feelings for the task they are in. The place and the type of work involved in the place will contribute to determine the model. You cannot engage in dancing poses while weeding and hence the particular model is found suitable for the place and the occasion. Therefore these determinants must be as a necessity taken as the criteria for regulating the use of the ICH. Prof. Dissanayake was jubilant that they in the UPVA have been able to contribute much towards the protection of ICH in two major ways. First, they claim that the students are being taught the ideal models as obtained from the master artists who passed down this knowledge from generation to generation without any problem or hindrance because they had studied them perfectly. University students are also being taught to follow them and uphold the age-old traditions hitherto brought uninterrupted in society. Now these things are not only taught to them but the knowledge that had remained up to now in oral traditions or in manuscripts in the possession of individual are being collated and published so that there may not be problems in the future about the ideal models. Secondly, the university has established research units in each faculty, and the teachers are engaged in high-quality research to prove various theories carried on up to now as mere oral traditions. At the same time, research is being conducted to prove scientifically how authentic is the wisdom, of the ancient masters when they chose a particular specie of plant or a hide or such material rather than not the other varieties. These researches have proved to be most helpful in establishing the fact that our forefathers had been very scientific in their approach to select various things in the past.

Finally, Prof. Dissanayake was kind enough to make suggestions to plan for mechanisms to regulate the proper use of ICH in Sri Lanka. He agreed that a high-powered team of experts as a task force may be under the direct supervision of the Executive President to regulate the affairs of overlooking the proper use of ICH will be ideal under the present circumstances. The team must be very powerful, and it must consist of true eminent persons of high achievements in the respective fields of ICH, and they should have no other obligations to anybody anywhere. They can regulate and establish research units and libraries of video and other materials containing highly authentic performances. The Centre should have facilities for researchers to use audio as well as visual material within the premises. There can be an eminent artist as the administrative head to coordinate the affairs.

## **6. Mr Ravibandu Vidyapathy, Advisor to the Hon Minister of Cultural Affairs and Arts.**

Mr Ravibandu Vidyapathy is a well-known exponent of local dance traditions and above all an internationally famed drum player whose contribution to the Drum Orchestra with all the possible different drums collected from East and West is much acclaimed among the great exponents of culture and arts throughout the world. Hailing from a traditional family of reputed artists, Mr Ravibandu not only carries the flag of the family very high but contributes his competence and skills for the wider society by serving as an Advisor to the Ministry of Culture and Arts. Hence he was considered an indispensable resource person for this survey. With his busy schedule, it was no easy task to get a convenient time, but his commitment to the cause was so strong that he was very kind enough to allocate a time late in the evening when a suitable time was not possibly available to share his experience towards a mission he considered as a national service.

He was very angry that no one had taken sufficient notice of the challenges that the common culture in this country is faced with. Every aspect of culture from the form of salutation through dress, courtesy, rituals, ceremonies, dance, music, and crafts all are subjected to modifications, corruptions, and other harassments to devoid it of its unique character and outstanding quality. Recently, there was a newspaper advertisement with a carrot set vertically and the headgear worn by the up-country dancers placed above the carrot. What an insult to the very symbol of the sacred art of up-country dancing. I made inquiries and found the author of this advertisement and explained to him the nature of the crime he had committed. For us the dancer's headgear is so sacred that we worship and venerate it. The day we have the ceremony of placing the headgear on our heads is the most important day in our life. But some ignorant person had adorned it on a carrot—it was meanest method of insulting that which we consider to be sacred and second in sacredness only to the sacred body parts of the Lord Buddha, such as the sacred tooth relic, collar bone relic, and jaw relic. This no doubt is a purposely designed attempt to denigrate our sacred cultural elements.

Along with the cultural skills that we receive during the training, we are introduced to all the good manners, customs, and ethics that are indispensable for leading a virtuous and exemplary life in the society. Culture is the totality of all these, and hence any harm inflicted on it is a crime committed against a society and a nation. Therefore, any attempt at all levels and especially at UNESCO level to safeguard culture from such anti-social elements is very

encouraging news for us. However it must be emphasised that our ICH or any part of the culture could be protected only by us and nobody else. Any foreigner may love it and come forward to save it from the threats of alien forces but he may not have the true feeling that we the owners of that culture have. Therefore it is our duty to safeguard what is ours with the full blessings of those foreign lovers of our culture.

If we are to succeed in protecting our cultural heritage, the first thing to do is to understand it and admire it with full awareness of its value and meaning. We have to love our own language and use it everywhere it can be used. It must not be unnecessarily intermixed with any other language to make it a prickle. Language is considered the lifeblood of a nation. So if we are responsible for defiling our language and thereby help it to decay, then we are committing a crime against ourselves and our nation. Same is true with the virtuous life that we have to spend. If we deviate from those values the culture we are striving to save will not remain since culture survives only on the good manners that we have inculcated and made a part of our life pattern. Wherever one may live, the sound of a drum or the noise of the chanting of Pirith will naturally kindle us and make us feel for our heritage. If any one does not get that kindling, it is a proof that he or she has deviated from the feeling of oneness. These are all symbols of our own culture that make us a part of the culture.

ICH of the traditional society appears to be the most vulnerable to these winds of change for the worse. One main reason for this situation is that it has no real owner in the modern sense. If there had been an owner, he or she will look after its safety at any cost. However, it does not mean that our ICH has had no owner in whatever sense. In traditional society, our forefathers created things not for their own glory or benefit but it was meant to be collectively owned and collectively made use of. Therefore, the actual owners of our ICH are the people at large and the entire society or the nation. This brings us to the question of who owns the great responsibility of looking after the safety of our ICH. It will be seen that it lies entirely and squarely with the government of the people who on behalf of the people holds the responsibility for good governance. If the life blood of the people and the nation face the danger of extinction, how can one argue that the government had been delivering good governance to the people?

Still for all one cannot wash off his hands by entrusting to the government the gigantic task of safeguarding something that the entire nation is benefitting from. If the government belongs to the people, then it is the people who have

to be active in the act of safeguarding the culture. Therefore, ultimate responsibility will lie on the people, and it cannot be passed over to others. Again, it is going to be the efforts of the beneficiaries that matter in upholding cultural heritage. It is the people who have to push state agencies into action in areas where involvement is necessary. We the exponents, and practising artists can lead the way so long as the members of society are keenly grafted into the movement to save our heritage that the entire world considers to be irreplaceable.

One of the ways that we engage in to help the community to safeguard its heritage is by disseminating knowledge on performing and visual arts that we are capable of. Along with the arts, we inculcate good manners that make the society calm and peaceful. It is up to the people to make maximum use of this service and to contribute their might to propagate our heritage. Yet people unfortunately seem to be busy guiding their young ones on streams that lead them find jobs rather than making them good humans. Therefore, the people will have to think anew and decide where they are going to lead their future generations. If ever they wish to eradicate unfortunate occurrences like the one mentioned above about the sacred headgear of the up-country dancer, the people have no alternative but to make the younger generations conscious of their proud heritage. If people overlook this reality, one may not be able to prevent the destruction of the Sri Maha Bodhi, Fortress of Sigiri, or the Temple of Sacred Tooth as irrelevant and painful remnants of the age of demons.

## **7. Dr Danister L Perera, Native Medical Practitioner and a Disseminator of Knowledge**

From the aesthetic field, attention was diverted to one of the most fertile areas of ICH in the country that has had a direct and very close affinity to people's daily life—namely the indigenous medical system. Dr Danister L Perera is an eminent scholar in the discipline and a practising medical man besides being a popular disseminator of knowledge in the country.

Indigenous medical knowledge is the collective wisdom of ancient society. It is considered a community's knowledge or ethno-science. For this kind of traditional knowledge, no individual ownership is entertained or attributed. It is basically a cultural repertory that is indeed in the public domain in legal terms. No commercial interest or trade affairs or unethical exploitation took place in ancient society related to this knowledge. This knowledge system was sustained on interconnected synergism of knowledge, knowledge holders, and biophysical resources of knowledge for long time. Therefore, IPR-related

issues should be discussed in the specific bio-cultural paradigm of the relevant community or country.

The existing western IPR regime does not deeply look into the cultural roots of knowledge systems and the community's rights. Most of the countries of the south demand for an alternative IPR regime to safeguard their traditional knowledge with cultural and humanistic values instead of exclusive monetary value. Knowledge cannot be abstracted as a separate element. It is interwoven with knowledge, skill, practices, attitudes, norms, language, and environment. Traditional medical knowledge or therapies or medicines cannot be validated in reductionist theories or out of a holistic approach to prove its scientific basis. In the same way, it is not tailored to the current knowledge market's needs that commoditise the knowledge.

Encoded knowledge or culturally codified systems are not receptive to outside communication or unprotected disclosures. It has its own defensive IPR system for sustainable transmission and selective modifications within positively qualified contexts. Therefore, the original knowledge source is always reputed as venerated or sacred. Even though knowledge is generated by the community through trial and error, it is considered as a social capital or a public-owned treasure that should not be exploited or adulterated. In ancient culture, the genealogy and pedagogue were very important in traditional knowledge systems to ensure and endorse the IPR. The original holiness attributed to knowledge, knowledge sources, and knowledge management process was prevailed without external manipulation.

Related to traditional medical knowledge, some currently accepted IPR practices may not be completely protective due to their cultural irrelevancy. The TKDL program in India looks like a kind of affirmative and culturally sensitised project in terms of defensive disclosure. It is successfully applicable to a well-documented and decoded system like Ayurveda but not for traditional medical knowledge, which is mostly embedded in verbal sources and practices. Establishing a digital database or virtual library can be a final step after gathering all available keystone information to an inventory. Then most difficult task will be the filtering, scrutinising and authenticating data that are really originated in indigenous culture. Collective ownership can be granted and declared as public domain only after thorough and extensive study.

Not only tangible resources or recordable practices but designs, symbols, verbal pronunciations, gestures, customs, norms, and procedures must also have a place in an alternative IPR model. For an example, in traditional

medicine pulse reading techniques are completely different from pulse checking. It is a kind of multitask competency and cognitive skill gained through a generation. This kind of knowledge cannot be simplified into a one single linear action or standard protocol. Something like virtual blessings extended by a physician by means of merciful touch or reciting a mantra will not be in the scope of existing IPR regime. But these kinds of controversies or exclusions or ambiguities will allow unfair, inequitable, and unethical exploitations to take place. One viable model for safeguarding IPR is to encourage traditional knowledge transmission systems (for example, the gurukula system, a teacher-based line of practitioners) and reinforce value-oriented knowledge sharing processes in specific fields.

## **8. Director-General of Intellectual Property Rights Authority of Sri Lanka (IPRASL)**

Establishment of IPRASL can be considered a bold step taken by the government of Sri Lanka as a signatory to the International Charter on the Patent Rights with an avowed commitment to legal implementation of the provisions of the Charter. This is only a regulatory body helping the parties concerned to ensure the uninterrupted enjoyment of their rights and dues. The provisions that had been made available have the force of an international rule since the entire world is bound by the same rule and same regulation.

Yes, it is agreed that there should have been some tendency to allow local flavour to be sensed from these rules and regulations, but if that is accommodated then the common characteristic will disappear from the entire exercise.

Undoubtedly the cultural context cannot be ignored, and the fact that the concept of IPR or patent rights appear to be foreign to us in the present context cannot be denied. But in the good old days, the concept appears to have been in vogue though it was not as rigid as it is now. Moreover, social backgrounds have taken a complete change, and hence we are compelled to adjust ourselves to the changing needs.

IPR issues arise from the acceptance of the concept of ownership or the authorship of the creations. The noncompliance with the inherent rights of the owners or the authors consolidated by legal recognition leads to breaches of the law. There are accepted mechanisms to determine the ownership or the authorship under the current regulations. Whoever proves with admissible proof to the ownership of and derive benefits from the creation and any legal

inheritor to whom the rights had been legally handed over by the lawful owner will have the ownership legally handed over and will be declared the owner or the author for which others have obligation to obey and honour. Refusal leads to problems. This is the current situation based on the modern concept of IPRs.

However it cannot be said that traditional ICH can claim for the same privilege. Traditional ICH is carried over from generation to generation with no exact known or identified owner or an author attached to them. These creations are all cultural expressions of the society at the time with no identifiable author, and hence considered as common property of the community or the people. Not only they belong to the people but also they are intended for the good or the benefit of the people at large individually or collectively. Since all the people have a share of the ownership but cannot manage the elements individually, the function of protection, nourishment, and taking care against any misuse or damage has been automatically handed over to the agent of the people namely the government or the state. Therefore, everyone in the society stands to benefit from but no one has the right to do any harm intentionally or otherwise.

The view that the concept of IPR is alien to us since it had originated in the West and imported here with no due consideration for the value system or the cultural pattern of the country has some validity, but it does not convey the whole truth. The Sri Lankan social system no doubt with its nourishment received from Buddhist teachings moulded the people to serve society in whatever way they could, without greed for personal gains and hence their creations were never meant for personal glory. Therefore, one may argue that none of the creations of the forefathers had ever been identified with an individual since they are the results of the collective efforts of a group.

Yet one may argue that there is evidence to prove that authorship rights have been respected in the past though it is accepted that the whole concept of IPR has come to light even in the West as late as the sixteenth century with rules and regulations seeing the light of the day only as late as eighteenth century. Also one is not certain whether there were or were not mechanisms used by the royal and provincial hierarchies in the distant past to bestow the ownership or the authorship to the creators but the validity of different ways adopted by them to honour certain achievers in the past cannot be underestimated in arriving at final judgements.

In the absence of an identified owner or author of the creations in traditional society, the most important factor to be taken into consideration in

determining the pros and cons of the issue of IPR in respect of the traditional cultural heritage is the purpose and the intention of the creations as we would come to agree on the basis of our common understanding of the concept of Culture. Everything in the traditional society is a solemn and sacred part of the culture in which they survived and towards which they contributed according to their might. Hence nothing can be out of context in that culture. Therefore when one needs to understand the intention or the purpose for which a particular creation had been put in place we can understand how we can reproduce it without harming its originality. Hence the issue of reproducing, exemplifying, or even recreating may not be a problem to bother about so long as the intentions are clear and straight forward and are not sinister.

It must be mentioned with much respect to Dr Karunaratna that he had been of tremendous service to his motherland in the relevant field and his wise counselling has been well recognised even by the international organisations as is proved by the honours bestowed upon him. The survey team was fortunate to get a copy of a draft legislation he had authored that was intended to be an amendment to existing provisions to deal more efficiency with the relevant rules and regulations in respect of Indigenous Knowledge (IK). The title of the document is “A Legal Framework for the Protection of Traditional Knowledge in Sri Lanka” (Working Document-Version 01-December 2006). It is undoubtedly a master piece designed to prevent any misuse or corruption of IPR in respect of IK, which forms a heavy load of ICH in countries such as Sri Lanka, where almost everything called ICH is complementary to what we call IK. This draft has received much appreciation and acceptance from world bodies and from the international experts, but unfortunately it has yet to receive local acceptance. The fears and the doubts expressed by certain quarters in the course of interviews held with this survey team in respect of the motivation for and the efficiency of the mechanisms of implementation of the provisions can be easily understood if experiences of this sort happen to be regular occurrences.