LST REVIEW

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Making the WTO Relevant to Us

Consumer Justice System in Sri Lanka - The Need for Reform

Technical Error: Development of Technology but not of the Law

Legal Education in Sri Lanka

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Law & Society Trust,
3, Kynsey Terrace, Colombo 8
Sri Lanka.
Tel: 691228, 684845 Telefax: 686843
e-mail:lst@eureka.lk
Website: http://www.lawandsocietytrust.org

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Editor's note ...

This month's issue of the LST Review celebrates the 20th anniversary of the Law & Society Trust with contributions exclusively from in-house writers.

The first two articles of the Review proceed somewhat on the same lines in that they both relate to aspects of Commercial Law. In the first article -***'Making the WTO Relevant to Us'***- by Ms. Rasika Mendis, the author focuses on the role of the WTO in today's global economy and explores to what extent and also in what ways can or should this position be of any use or relevance to Sri Lanka as a developing country.

Ms. Avanthi Gunatilake's article on the ***'Consumer Justice System in Sri Lanka – The Need for Reform'*** focuses on the area of consumer rights. It discusses the need for a strong consumer welfare system in Sri Lanka as a developing country, particularly in the face of rapid commercialisation and globalisation of day-to-day life styles. The author while emphasizing the significance of a consumer welfare system further highlights the essential components that are required to guarantee its effectiveness and continuity.

Moving on similar lines, the review also contains an article on the topical issue of computer crimes –***'Technical Error :Development of Technology but not of the Law'***- by Mr. Dulip Samaraweera. Here he explores the extent to which Sri Lanka is equipped legally to deal with the threats posed by the development of technology- particularly in the IT industry.

The final article by Ms. Naazima Kamardeen traces the development of ***'Legal Education in Sri Lanka'***. The author highlights the milestones of legal education in Sri Lanka, through a description of the establishment of institutions devoted to legal education in Sri Lanka i.e. the Faculty of Law, University of Colombo; the Open University of Sri Lanka and the Sri Lanka Law College. A detailed analysis of the processes and strategies formulated by each institution and a comparison of the different curricula with relevance to their contribution toward the promotion of legal education in Sri Lanka, is also included.

On the 25th of May 2002 the Law & Society Trust (LST) celebrates its 20th anniversary. Therefore, this month's issue of the LST Review is supplemented by a booklet on the Law & Society Trust. The supplement briefly traces the development of LST to what it is today- a non profit making body committed to improving public awareness on civil and political rights and social, economic and cultural rights and equal access to justice. Further the booklet contains a brief description of the current programmes of the Trust and the respective projects under them.

Special thanks to Ms. Naazima Kamardeen for her assistance in the compilation of this edition of the LST Review.

Making the WTO Relevant to us*

*Rasika Mendis***

Introduction

The globalisation of international trade has progressed for centuries and culminated today in a single regulatory institution, the World Trade Organisation (WTO). Ministerial meetings of the WTO are held at least once in two years, in view of the fact that the WTO is a 'member driven' organization. Hence all decisions are taken by member countries, through various committees and councils. Member countries are represented by 'ministers' on behalf of their respective governments. Given the complexities of trade in today's context of neo liberal globalisation, a rules-based, consensus driven organisation such as the WTO presents a platform for countries to enter into negotiations on an 'equal footing'. In view of the diverse challenges that the pace of globalisation presents to developing countries in particular however, it is a point of debate as to how workable this concept of an 'equal member' forum is.

The mandate of the initial 'agreement' establishing the WTO holds much potential for achieving the kind of development needed by the majority of the WTO members. Therefore, a clear understanding of the WTO, as the premier institution regulating international trade, is crucial to present day economic development. It is also necessary to critically evaluate its relevance to a particular region or country, with a view to taking better advantage, of both its benefit in the future and its 'member driven' character. A clear perspective is needed however, of the fundamental premises on which the WTO operates, in attempting to make this development a reality for the majority of the WTO membership - the developing nations.

The founding document of the WTO, the 'Marrakesh Agreement', has as one of its objectives, the *'……..(expansion) and production of trade in goods and services, while allowing the optimal use of the world's resources in accordance with the* ***objective of sustainable development***'. The Doha Ministerial Conference (the 4th ministerial conference of the WTO) held in November 2001 in Qatar, reiterated the commitment of the WTO to promoting sustainable development. The objectives of sustainable development are to be achieved by the participation of member economies in a *world trading system that is based primarily upon*

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* The Introductory Paper for the WTO Unit of the Law & Society Trust.

** Attorney at Law, Researcher, Law & Society Trust

market friendly policies.[1] The Doha Ministerial Declaration further stressed its commitment to the WTO as the *'unique forum for global trade rule making and liberalisation'.*

Following the confusion and chaos of the Seattle Ministerial Conference in 1999, and the 'walk out' by developing countries from the negotiating forum, the deliberations of the Doha ministerial conference was at the very least 'promising'. The Doha Declaration has a focus on the concerns of developing countries and sets the stage for a more 'realistic approach' to integrating such countries into the multilateral trading framework. The declaration states in clause 2 that, -

> *'International trade can play a major role in the promotion of economic development* ***and the alleviation of poverty****. We recognize the need for all peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates... ... ... '*

The Declaration makes clear the link between international trade, the promotion of economic development and the alleviation of poverty. Poverty is an undeniable deterrent to the promotion of sustainable development, as it makes substantial demands on already scarce resources.

This paper ventures to explore the extent to which the WTO can work towards the alleviation of poverty. It asks also whether the economic development envisaged by the WTO and included in the above declaration, encompasses within its ambit the needs of sustainable development. Finally, it will attempt to analyse the extent to which the institutional mechanisms of the WTO can be instrumental in 'sustaining' development and growth.

Sustainable Development and Globalisation

The concept of sustainable development must necessarily be applied in a particular context of economic development. A developing country may be more limited in its capacity to sustain development due to other economic demands on its resources. This principle, highlighted in the famous Rio Conference on the environment, can be defined as *'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.*[2]

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[1] The Marrakesh Declaration of 15 April 1994

[2] "Our Common Future" – the Report of the World Commission on Environment and Development (1987, Oxford University Press).

The principle has been availed of mostly by environmentalists in striving to attain a balance between environmental and developmental considerations. However, it is a principle of universal application to all issues of development. It raises the question whether a particular plan for development undertaken by a nation, is one that can be sustained to generate consistent benefit to future generations and is effective to address adverse economic conditions such as poverty. The principle demands a more holistic approach to development. This may require the scrutiny of policies and plans of a particular nation, in terms of **viable** long-term development.

Sustainable development must also be viewed from a perspective of globalisation. Globalisation has been interpreted to mean a number of diverse things in the past. Ideally it denotes a bringing together of different cultural, political and economic ideologies. In the context of neo-liberal globalisation however, it refers primarily to the extensive integration of world markets. Achieving sustainable development in this context may have other additional implications for countries to contend with, such as the heightened processes of economic liberalisation, the promotion of policies such as privatisation, deregulation, and competition, and the gradual withdrawal of the state from economic activity.

This current trend of globalisation is promoted and facilitated by institutions such as the International Monetary Fund (IMF), and the World Bank. These institutions advocate the processes of globalisation as a means of achieving greater world economic development. However, parallel to the fervent wave of globalisation that has gripped the world economy, runs a skepticism resulting from the growing realisation that not all can effectively benefit from globalisation. It is evident that in the recent past, that economic disparity between the developed and the developing world has grown by large proportions. Some statistics evident of this are:[3]

- The economic gap between the richest 1/5th of the world's people, in developed countries, and the poorest 1/5th in developing countries, measured in average national income per head, widened from 30 to 1 in 1960 to 74 to 1 in 1997;

- The richest 1/5 account for 86% of the world's GDP, 82% of the world's export of goods and services, 75% of world's direct investment and 74% of the world's telephone lines while the poorest fifth have only 1% of these benefits.

While there is no clear evidence to attribute this growing disparity to globalisation itself, it is apparent that the phenomenon of neo liberal globalisation does not by itself bring about universal

[3] "***Globalisation and the United Nations***", by Dr. J.B. Kelegama, The Island, Monday December 11, 2000

growth and development. The state plays a significant role in regulating those globalising factors that are relevant and beneficial to its plans for development. However, what is significant to achieving sustainable development is not so much a question of whether or not it is globalisation that causes this disparity or not, but whether this disparity affects the 'capacity' of developing countries to cope with complexities of globalisation.

The signatories to the Marrakesh Declaration confirmed their resolution 'to strive for **global coherence** of policies in the fields of trade, money and finance including cooperation between the WTO, the IMF and the World Bank for that purpose'. To achieve a global coherence in economic policy, the wider issue of inequality seen between the developed and the developing world needs to be addressed. Advocating liberal economic policies and market reforms might prove meaningless unless countries are 'equal' to taking on these reforms and are thereby able to project development that may be 'sustained'. While a trading regime might promote 'economic development through market-friendly policies',[4] the context in which they are applied might erode the success of the regime; inequality in a membership that is placed on an equal standing will result in constant setbacks to its various targets and goals. A multilateral trading regime must essentially take into account the diverse economic and social contexts of its members in striving to achieve a global cohesiveness in policy making.

Liberalisation and International Trade

Trade liberalisation plays a key role in the globalisation of international trade. Macroeconomic studies undertaken by the WTO[5] and the World Bank estimate that 'substantial income gains are likely to accrue to all countries, if all of them – developed, developing and transitional economies – further liberalise their trade in goods.....All these studies estimate that trade would grow faster than would have been the case if trade were not to be further liberalised'.[6] The concern however is the 'pace of liberalisation' that is advocated by those key institutions of today's globalising world. It is apparent from a study of countries that have adopted liberal policies in the past few years, that it is not always the case that the most liberalised countries are also the best performers economically. A few developing countries which opted for a gradual approach, such as China, Thailand and Malaysia, have done relatively well.[7] It has proven imperative to understand other socio-economic and institutional constraints within each country, in order to make an analysis of the extent of liberal reforms that are feasible, given the magnitude of the possible negative outcome it might have in a particular context.

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[4] *Supra* 1
[5] These studies were undertaken in 1995
[6] '***Between Trade andSsustainable Development***', ICTSD, Bridges periodical, No.9 November/December 2001, page 3.
[7] *Ibid* page 12

Countries in economic transition, such as Sri Lanka, are especially vulnerable. They must be in a position, both to address transitional and restructural 'pains', as well as to plan for possible failures in the global market place. Prudent policy making and an effective institutional framework that is able to identify and address various constraints are needed to safeguard against the vulnerabilities of globalisation, and to work towards the objectives of sustainable development. The extent to which a country liberalises its trade must stem from a holistic approach to development, rather than be mandated at an international level.

Sri Lanka and the WTO

In the Marrekesh Declaration of 1995, participating ministers of founding member countries expressed their belief that the WTO would *'strengthen the world economy and lead to more trade, investment, employment, and income growth throughout the world'*. This vision statement embodies some of the vital concerns of developing countries.

Sri Lanka adopted a liberal economic policy in the late 1970s. Reforms aimed at diversifying the industrial base, privatisation and market access were introduced. Successive governments looked to the private sector as the "engine of growth". The report submitted by Sri Lanka to the Trade Policy Review Body (TPRB)[8] of the WTO in 1995, reflects a high level of initiative on the part of Sri Lanka towards a 'market friendly approach to development':

> *"Particular reference was made to phasing out of traditional import substitution policies, liberalisation of the investment regime, and ongoing processes of deregulation and privatisation in many areas. These efforts had contributed to economic growth averaging about 5 per cent in recent years, despite civil conflict..... The representative of Sri Lanka confirmed his country's commitment to trade liberalisation, economic deregulation, privatisation, and macroeconomic discipline".* [9]

[8] The TPRB of the WTO conducts a collective examination of the full range of trade policies and practices of each WTO member country at regular periodic intervals to monitor significant trends and developments which may have an impact on the global trading system. The review is based on two reports that are prepared by the WTO secretariat and the government under consideration (vide the WTO website: www.wto.org)

[9] WTO Press release, 14 November 1995 (PRESS/TPRB/18) '***Review of Sri Lanka TPRB's Evaluation***'

It is however pertinent, to pause and reflect on the questions, -

- Whether the above mentioned market friendly approach to development adopted by Sri Lanka is in fact leading to the kind of development envisaged in the Marrekesh Declaration, and
- How successful Sri Lanka has so far been in negotiating towards the possible benefits it can gain from the WTO trading system.

A key issue for Sri Lanka is the extent to which multilateral trade and the WTO can promote sustainable development in the Sri Lankan context, and also the extent to which Sri Lanka can rely on it for its developmental needs.

The statement given by the Government of Sri Lanka to the fifth session of the United Nations Commission on Sustainable Development (1997),[10] outlines a three-pronged strategy for combating poverty:

1. Achieving economic growth and development to create employment and improve the standard of living;

2. Achieving human development through the provision of improved health education services, meeting basic needs, protecting vulnerable groups and ensuring human rights, and

3. Direct intervention aimed at those who have not benefited from growth-related policies, such as low-income groups.

As stated above, poverty is recognised as an impediment to achieving sustainable development, as resource allocation for developmental needs is diluted between a population that makes demands on it for their survival, and governments which are unable to maintain a basic standard of living among the population. The mandate of the WTO and the belief that it will strengthen economic growth to generate better employment and income is commensurate with the above strategy for eradicating poverty and achieving sustainable development. Undoubtedly, international trade can give an economy the boost it needs for development and growth. However, whether the trade regime established by the WTO has the framework and the potential to work toward development in terms of eradicating poverty and promoting sustainable development needs to be determined.

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[10] Information given by the Government of Sri Lanka to the fifth session of the United Nations Commission on Sustainable Development. Last Update: November 1997
http://www.un.org/esa/agenda21/natlinfo/countr/slanka/eco.htm

The Institutional Framework and Integration

A key mechanism of the WTO framework aimed at facilitating the needs of developing countries is the Committee on Trade and Development. This committee is entrusted with the task of overseeing the implementation of the special provisions applicable to developing countries, in the various WTO agreements. It further provides guidelines for technical cooperation, and increased participation of developing countries in the trading system. The Subcommittee on Least Developed Countries reports to the above committee and has within its mandate the tasks of[11]–

- Integrating least developed countries into the multilateral trading system;
- The provision of technical cooperation.

Under the first head, this committee has identified two main areas in which integration of these countries may be facilitated: First, by helping them create the capacity to build the necessary instititutions and expertise. Second, by the preparation of a 'WTO Plan of Action' for Least Developed Countries. 'Technical Cooperation' of the WTO is another area of work that focuses exclusively on enabling developing countries to operate successfully in the multilateral trading system.

To the extent, the institutional framework of the WTO gives special attention to the needs of developing countries to integrate better into the WTO system, it reflects the magnitude of change that must come about for developing countries to effectively participate in multilateral trading. Technical assistance, better institutional organisation and expertise are some of the areas that need attention. Much of the focus of the WTO institutional framework is on the processes of **integration;** the primary task of the Committee on Trade and Development and the work that comes within its purview, is the task of successfully integrating developing countries into the multilateral trading system. Enabling developing countries to operate successfully within a trading system, however, needs a focus that goes beyond facilitating integration.

The question that poses itself, in light of the fact that there is no clear strategic criteria to draw a link between such integration and the eradication of poverty and the promotion of sustainable development, is whether it is presumed that a better facilitation to trade guarantees the attainment of these conditions. In the face of extreme poverty, scarce resources, and horrendous social and economic disparities faced by most WTO members, a trade regime that fosters 'equitable development' rather than mere economic development is in keeping with the needs of these countries in striving for greater 'equality' and a better 'capacity' for growth.

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[11] '***Trading Into the Future***', (WTO) 2nd Edition – revised April 2001

"Trade is not an end in itself but a means to sustainable development, human development, and balanced equitable development at global and national levels. The global trading system should thus be oriented in ***approach and operation*** *toward the objective of satisfaction of material and non-material human needs of the world's people. Aspects of trade that can serve this goal should be encouraged and promoted. Other aspects that are inappropriate, at least during particular periods or in particular periods facing a country, should be treated with caution".*[12]

The Committee on Trade and Development oversees the implementation of special provisions applicable to developing countries with the objective that these countries achieve greater economic liberalisation. Projecting a trade regime toward promoting equitable development however, is pivotal on the point that it has the institutional framework that can bring together and synchronise a membership with divergent economic policies and social constraints, rather than seek a singular commitment to market friendly liberal policies by all member economies. The facilitation of developing countries to integrate better into the trading system needs to be defined in terms of both equitable and sustainable development. Technical cooperation, institutional building and expertise must have a perspective to integration, which sees as its end, the **sustainability** of the development it helps generate. This may be achieved in a number of appropriate ways, such as working with institutions and programmes within member countries, which are directly concerned with such issues as poverty, unemployment and development.

Negotiating Trade – Implications for Developing Countries

Another aspect that affects the relevance of the WTO system is how effectively it enables a member country to pursue and meet national interests through negotiations. A member must have adequate opportunity to direct the work plan of the WTO to meet its developmental needs. While there is the institutional framework for capacity building and the general facilitation of developing countries with progression in the WTO, constructive integration is necessarily a two-way process. This entails the 'effective' participation of all member countries in the negotiation process.

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[12] '***A Development Perspective of the Multilateral Trade System***' Report by the Third World Network, August 2001

Developing countries may need to consider a number of factors and options in this regard. Some of them include, whether -

1. A country has the expertise to interpret the complex rules of the WTO agreements, and the provisions of ministerial declarations;

2. It has the capacity and the expertise to make an informed and responsible choice on behalf of itself;

3. Regional representation at the WTO negotiating forum, would make more effective their stand on matters;

4. They should work in collaboration with other institutions such as the UNCTAD, and the UNDP in attempting to make trade within the WTO play a more relevant role in its processes of development;

5. Bi lateral and regional trade agreements are more relevant to issues of trade within a country, rather than a multilateral trade agreement which a country has little power to control, and

6. It has the necessary domestic institutional framework that supports multilateral trade.

It is important for member countries such as Sri Lanka to formulate an internal plan of action, and strategies for future negotiations accordingly. Strategic planning may need to take some of the above considerations into account. Primarily, it should involve an assessment of programmes that are currently in implementation for institution building, and social and economic betterment of the population. Sri Lanka must undertake strategies for negotiations from a perspective of its internal planning for poverty eradication and sustainable development. It is apparently the case that developing countries are able to give very little input during negotiations, and are content to let negotiations take their course, and hope for the best.

Sri Lanka has outlined a three-pronged strategy, as stated above,[13] for the alleviation of poverty. This report, under the head of 'Economic Aspects of Sustainable Development in Sri Lanka', identifies 'inadequacy of finances and technology, and a supportive system of global trade and international cooperation' as the **main constraints** to achieving sustainable development. After a brief analysis of economic factors relevant to Sri Lanka, the report expressed a need for a more equitable trading system supportive of sustainable development, for which international cooperation is 'vital'.

[13] In its report to the 5th session of the United Nations Commission on Sustainable Development, New York, 7-25 April, 1997.

The challenge to policy makers in Sri Lanka is to effectively strategise and negotiate for this urgent need of a more equitable trading system and international cooperation.

The Doha Declaration and Conclusions

The Doha Ministerial Declaration gave much emphasis to the developmental concerns of developing countries and recognition to the '*need for all peoples to benefit from increased opportunities and welfare gains that the multilateral trading system generates*'. It spoke specifically of the Least Developed Countries, that '*every effort would be made to ensure that these countries secure a share in the* ***growth*** *of world trade commensurate with the needs of* ***economic development***', and recognised their particular vulnerability; also of their '*beneficial and meaningful* ***integration*** *into the multilateral trading system*'.

Significant to the main thrust of this paper is clause 5 of this Declaration, which states that –

> "*We are aware that the challenges members face in a rapidly changing international environment cannot be addressed through measures taken in the trade field alone. We shall continue to work with the Bretton Woods institutions for* ***greater coherence in global economic policy***".

The contribution that a multilateral trade regime can make towards achieving greater coherence in global economic policy is central to the effective participation of developing countries in international trade. This contribution should reflect prevalent inequalities in its membership, and the challenge facing developing countries of achieving sustainable economic and human development. Is this development achieved by advocating market friendly policies or by providing a forum that encompasses varied policy alternatives that promote development in the particular economic context of which it is implemented? It is pertinent at this stage to reflect on the thoughts of Amartya Sen:[14]

> "*The case for taking a broad and many sided approach* ***to development*** *has become clearer in the recent years, partly as a result of the difficulties faced as well as successes achieved by different countries over the recent decades. These issues relate closely to the need for* ***balancing the role*** *of the government – and of other political and social institutions – with the functioning of markets*".

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[14] Amartya Sen (Winner of the Nobel Price in Economics) – '***Development as a Freedom***', at page 126 (1999) Alfred A. Knopf, inc. This section deals with 'Markets, State and Oppurtunity'.

The Doha Ministerial Declaration reflects an initiative on the part of the WTO, towards a multifaceted approach to development as envisaged by the above quotation. Clause 2 of this Declaration is especially reflective of this approach as it states that 'international trade can play a major role in the promotion of economic development and the alleviation of poverty'. An interpretation of this clause projects international trade as a means rather than an end to achieving both economic development and poverty alleviation. Achieving economic development however, does not imply that the alleviation of poverty will also thereby be attained. An agenda that seeks to link economic development with issues of poverty, and which attempts to remove other constraints that deter growth, needs to be identified.

There is much potential within the WTO to work towards poverty alleviation as a part of a broader mandate to achieving sustainable development. However current WTO provisions may need to be extended to fulfill an agenda that seeks to establish the above link between economic development and issues of poverty. The Doha Declaration entrusts the Committee on Trade and Development with the task of identifying and debating, within its mandate, *'developmental aspects of negotiations, in order to help achieve the objective of* ***having sustainable development appropriately reflected***'.[15] The Committee also provides capacity building to facilitate negotiations, and provides developing countries with technical cooperation for issues concerning the implementation of the WTO agreement. The mandate of The Committee on Trade and Development could incorporate provisions that seek to specifically address issues of poverty, through its Work Programme and involvement in negotiations.[16]

The task of the developing world, is two-fold:

1. To build a deeper understanding of the implications of globalisation and rule making within the WTO;

2. To enter into the negotiating process of the WTO, with the confidence of being able to make 'real and responsible choices' on behalf of themselves.

The WTO has the scope to offer the world's poorest countries much opportunity for development. However, its approach and benefits must be assessed and evaluated, in light of other social, economic and institutional conditions within a country, with a view to making integration into the WTO more relevant to these conditions, and ensuring that maximum benefits are derived from that integration.

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[15] The (Doha) Ministerial Declaration, WT/MIN (01)/DEC/1, adopted on November 14, 2001, clause 51

[16] A new Developmental and Economic Research Division is to be established, whose responsibilities include servicing the Committee and providing analytical support for the Work Programme of the Committee ('***Organisational Changes in the WTO***' – Speech by Director General Mike Moore, 14 December 2001, WTO website: www.wto.org).

Consumer Justice System in Sri Lanka - The Need for Reform

Avanthi Gunatilake[*]

1. Introduction

The ever-increasing commercialisation of our complex lifestyles, together with rapid globalisation, emphasises the need for a strong consumer welfare system. Being a country struggling to eradicate poverty through the open-economic path to development, Sri Lanka too has its own hurdle to overcome. This paper, whilst emphasising the importance of consumer welfare, seeks to highlight some essential features-both legal and non-legal in nature-that are mandatory for the successful operation of the consumer justice system. It will first introduce the basic consumer law framework in Sri Lanka (2) and proceed to analyse some of the fundamental reforms that are needed (3.1). The main role players that affect consumer welfare as well as what is expected from them will be briefly discussed (3.2), as law reform by itself will be of limited use in making consumer welfare a reality.

2. The Legal Framework

The Sale of Goods Act enacted as far back as 1896 brought in statutorily implied warranties, which sets out minimum standards that any 'good'[1] must comply with.[2] In addition the Unfair Contract Terms Act[3], The Fair Trading Commission Act[4] and other numerous Acts created laws in order to protect the consumers from exploitation.

The Consumer Protection Act No. 1 of 1979 was enacted to exclusively look in to consumer complaints. This Act expanded the implied warranties already granted and introduced many additional safeguards for consumers. These include provisions pertaining to price and standard of goods, misleading or deceptive conduct, false representation, and most importantly implied warranties for the supply of services[5]. The special feature about this law was that it established an office by the name 'Commissioner of Internal Trade' to further consumer welfare. This

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[*] Research Assistant - Law & Society Trust.

[1] Goods include all movables except money.

[2] Sale of Goods Ordinance No. 11 of 1896. Sections 13,14, 15, and 16 are the main provisions relating to statutorily implied safeguards for a buyer. However, these remedies are available to 'buyers' in general and not limited to 'consumers'. The definition of buyer is 'any person who buys or agrees to buy goods' [sec. 59(1)] and will also include a person who buys for commercial purposes.

[3] No. 26 of 1997

[4] No.1 of 1987

[5] Section 22 of

provided an extra judicial remedy, whereby a consumer complaint is looked in to by the Commissioner and granted relief accordingly. The law strove to avoid the drawbacks of the formal legal proceedings and sought to bring speedy and effective relief to the consumer in the most cost effective manner.

Were the purposes underlying this statute achieved? It is difficult to state that the aspirations of the law reformers were met with. At this point the mere analysis of the legal provisions is of limited use and the actual working of the Commissioner as at today must be looked in to. A reasonable assessment of the prevailing situation would provide ample evidence that the institutional framework put in place by the Act has been of very limited use. This is mainly due to the severe lack of competent officials. Further, according to the authorities, there are no provisions for the enforcement of rewards or damages ordered by the Commissioner. It was also pointed out that the proposed Consumer Protection Authority Bill too does not cater to this need for a strong and effective enforcement mechanism.[6] This is a massive drawback of the system, which in reality completely destroys its effectiveness in providing consumer justice.

Deficiencies in the law and in the working of the system have left the consumer abandoned and helpless. The institutional foundation put in place by the Consumer Protection Act which has been carried on to the district level, together with the new state of the art website designed by the Department of Internal Trade consisting of an online complaint form, has made the Internal Trade Commissioner accessible to consumers in all parts of Sri Lanka. Nevertheless, there is still a profound lack of consumer justice and the reasons for this is worthy of examination.

3. The Need for Reforms

In the light of the above observations one must examine the reasons that have impeded consumer welfare in Sri Lanka, thereby confining it to a large extent to the four corners of the legislative enactments. The failure of the present system in distributing consumer justice is due to two broad reasons.

I. The inadequacy in the laws to provide an effective enforcement mechanism for consumer redress.
II. The lack of awareness on the part of the consumers of their rights and how to obtain relief.

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[6] Personal interview conducted with the Commissioner, Department of Internal Trade.

3.1 The Need for New Laws

The proposed Consumer Protection Authority Bill has been awaited for a lengthy period of time. But, it is believed that this Bill once passed will bring about for the consumer, a number of favourable provisions. These include a more efficient authority called the Consumer Affairs and Fair Trading Authority (CAFTA) which will look into consumer complaints, a section on consumer rights and a consumer fund that can be utilised for consumer welfare.

Although the proposed law does have some redeeming features, it is on the other hand a mere improvement of the existing mechanism. Further, unlike the existing office of Internal Trade Commissioner which exclusively handles consumer welfare, the proposed CAFTA is also burdened with the duties so far performed by the Fair Trading Commission. This is likely to take its toll on the consumer welfare work.

Identifying a system that is likely to provide the best mechanism for consumer redress depends on various factors affecting each country. For instance, in Sri Lanka the majority of the consumers are of a very moderate or poor financial status. It is unlikely that an aggrieved consumer will have the capacity to sacrifice many resources to pursue a remedy. Therefore, the redress mechanism must be **low in cost**, **speedy** in the dispensation of justice and **accessible** to rural consumers.

3.1.1 Low Cost Litigation

One of the main disadvantages of ordinary civil litigation is the high cost that is associated with it, specially in securing the services of a lawyer. Whilst many countries have adopted numerous ways to resolve this difficulty, the Indian system seems to be the most effective since the introduction of Consumer Courts in 1986.[7] The Consumer Courts system which is operational from regional levels up to an apex National body, consists of informal tribunals established exclusively to dispense consumer justice with minimum cost to the consumer. In Sri Lanka the Internal Trade Commissioner and the proposed CAFTA are administrative bodies that are to look in to consumer complaints, with a view to reducing the cost of litigation. In the actual working of any of these bodies, the officials must give effect to the requirement of low cost. At this point it is essential to note that the orders given by such body must be legally binding. The prevailing situation under the Internal Trade Commissioner is unsatisfactory as his/her orders are not of any legal effect and separate action needs to be taken to obtain relief if the order is not complied

[7] The Consumer Protection Act, No. LXVIII of 1986

with. Hence, there is a strong need for an effective enforcement mechanism, which will deliver consumer relief with minimum effort.

A practical reality that needs to be kept in mind by the law reformers is that, a consumer does not have the resources to defend an appeal in the Court of Appeal or the Supreme Court, which are both situated in Colombo. In many instances when the manufacturer chooses to appeal, the consumer is compelled to accept defeat for all intents and purposes. Although the writ jurisdiction of the Court of Appeal is indispensable, some provision must be made to minimise the undesirable effects it might have on a consumer. One method of offsetting this would be to vest the appellate jurisdiction in the Provincial High Courts. This way, the consumer complaints that are resolved at the regional level[8] will remain within the province at the first appeal, which would to some extent ease the burden on the consumer.

India has proposed to discourage lawyers appearing before the Consumer Courts[9], as a step towards reducing the strain on the consumer due to the high cost of legal fees, which is most often higher than the loss suffered by the consumer. This attempt of the Indian Consumer Courts to move away from the formal courts system brings justice closer to the consumer. A consumer is encouraged to state his or her case before the forum, and the attitude has been to minimise the involvement of lawyers. Such an approach has made the courts more accessible to the consumers. Any tribunal established to dispense consumer complaints must be 'Consumer friendly' in nature-leaving the abstruse jurisprudential arguments, the treasured Latin maxims and the stringent procedural laws for the courts *proper*. This is an important issue that not only the law reformers, but also more importantly the persons involved in handling consumer complaints must keep in mind.

3.1.2 Access to Justice: Reaching out to the Regions

Considering the large rural consumer base in Sri Lanka, a model similar to the Indian Consumer Courts might be of guidance in reforming our law. The Indian Consumer Protection Act introduced a regionalised system with three tiers of operation. These consist of: the District Forum operating at the grass-root level, the State Commission, and finally of the National

[8] infra, discussion at section 3.1.2

[9] The Indian Consumer Protection (Amendment) Bill 2001 has sought to introduce provisions to limit the appearance of a lawyer. It was proposed that the opposite party could engage a lawyer only if the complainant (consumer) engages a lawyer, is himself a lawyer or has no objection to engaging a lawyer.

Commission.[10] This de-centralised system has been successful in bringing justice closer to the consumer. This piece of legislation emancipated the underprivileged consumer by not merely enacting a remedy, but giving such remedy force and effect in day-to-day life through an accessible and efficient enforcement mechanism.

In Sri Lanka regrettably, consumer redress in practice is mainly based in Colombo. Although the Government Agents in each district have a role to play, the handling of complaints is mostly done in Colombo due to the lack of resources, jurisdiction, and other obstacles in the districts.[11] The rural consumer is likely to be in a less advantageous position that an urban consumer who might be in a more favorable situation with regard to asserting his or her rights. Yet it is in the provinces that a consumer redress mechanism is essentially a mirage; or rather, is yet to make an appearance in the life of the rural consumer.

If consumers living in the suburbs are provided with regional forums in their own territory, to which they can take their cases, it will amount to a giant step in advancing consumer justice. Such a move will not only increase consumer awareness, but will also substantially reduce the costs incurred in pursuing a remedy. Moreover the existence of multiple consumer redress forums accessible at regional levels will increase the efficiency of the system.

3.1.3 Speedy Justice

Speedy relief to a consumer complaint is a *sine qua non* for consumer justice. Consumers are unlikely to file complaints if the inquiry proceedings are to take years to conclude. In many instances such a hassle might not be considered worthwhile, as the damages prayed for in most of these complaints are of considerably low value. After all, it is unlikely that a consumer who is denied any relief when his radio stops working even during the warranty period, would be willing to go through years of proceedings to gain redress.

Keeping this in mind, the proposed Consumer Protection Authority Bill has set out maximum time limits within which the inquiry must be disposed of. The time limits that were introduced by way of an amendment[12] to the proposed Bill, states that the Authority is to conclude an inquiry within 100 days and the Council within a month. However, this amendment has limited the applicability of the time limits to inquiries carried out under part III[13] of the Bill, and *leaves*

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[10] Chapter III of The Consumer Protection Act

[11] Personal interview with the Commissioner, Internal Trade. At the Department of Internal Trade (April)

[12] Published by the Department of Commerce and Consumer Affairs in February 2002 as a supplement to the Consumer Protection Authority Bill.

[13] Part III relates to inquiries regarding Mergers, and Anti-Competitive Practices. Although these inquiries too have a profound impact on consumer justice, inquiries relating specifically to consumer complaints fall under part II of the Bill

out part II which pertains to consumer complaints. Therefore, it is unfortunate that there are no time limits for inquiries relating to a consumer complaint. Further, it must be stressed that adjournments and postponements must be dealt with extreme caution, as this drawback itself is sufficient to defeat the whole purpose of the law. The main stumbling block again, would be the appeal procedure, since given the delays in our legal system, appeals are bound to take a good number of years to conclude.

3.2 Consumer Awareness

The acute lack of consumer awareness is a fundamental reason for the failure of the Sri Lankan consumer justice system. Even the most progressive laws will be of no use if the consumers are sleeping on their rights. Consumer rights have been recognized to protect the consumers from, among others, the inequality of bargaining power and the widening information gap in the market place. The popularisation of free market economics and the deregulation of the financial sector in many countries have reinforced the need for the protection of consumer rights. In Sri Lanka the awareness of consumer rights is painfully inadequate among the consumers.

Consumer rights are well illustrated in the United Nations Guidelines on Consumer Rights.[14] These have been used as a guideline for consumer law in many countries, and have been proposed to be incorporated in Sri Lanka as well.[15] There are seven categories under which the guidelines go in to detailed provisions. The main guidelines include: protection from hazards to physical safety; economic interest of consumers; standard for the safety and quality of goods; distribution of essential consumer goods; availability of effective consumer redress; consumer education and information etc.[16] The guidelines also contain detailed provisions as to the procedures that need to be followed by business organizations, media and governments-who are considered the main violators of consumer rights. However, the guidelines, which were drafted in the mid 80's, have been criticised as highly inadequate today, due to the rapidly changing nature of commerce. Considering new developments in globalisation, e-commerce, internet etc., the already formidable task of consumer protection has become even more complex.

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[14] United Nations Guidelines for Consumer Protection (1986): United Nations Department of International Economic and Social Affairs.

[15] Islamabad Consumers Protection Act 1995 - http://www.ciroap.org/apcl/countries/pakistan.html

[16] *Supra* n.14

3.2.1 Consumer Education

Consumer awareness is based on proper consumer education. The right to Consumer education is a basic right of a Consumer that is recognised by the UN Guidelines (1986). Gurjeet Singh states -

> *'Thus the main forces and the thrust of the consumer movement has to be on consumer education in order to protect the consumers who, on account of their illiteracy and ignorance of the complicated business practices and their weak bargaining position in the market, are prone to exploitation at the hands of unscrupulous businesses.'*[17]

Knowledge at all times provides an empowerment that is the starting point in the consumer justice system. In Sri Lanka, consumer education is virtually non-existent. It is so far not taught at school level, neither is it taught at graduate level, even as a part of legal education. This is specially addressed in the UN Guidelines as: urging governments to strive for the inclusion of consumer education as 'an integral part of the basic curriculum of the educational system, preferably a component of existing subjects'[18]

3.2.2 Media and Consumer Awareness

Another important means by which consumer awareness can be enhanced is via the media. Neither the print nor audio visual media take an interest in the welfare of the consumer on whose doorstep or living room, the most elaborate trade puffs are landed on a mass scale. The role to be played by a media organization is two fold. Firstly, the very promotion of consumer rights and creating awareness can be achieved through the participation of the media. On the other hand, media organizations can play an active role in the implementation of some of the consumer protection laws that are constantly violated by manufacturers. For instance, sections 28 and 29 of the Proposed Consumer Protection Authority Bill[19], holds a trader liable for misleading or deceptive conduct, and false representations made in connection with product promotions. Instances of advertisements violating these laws and regulations are not all that rare. Nevertheless, the media which is very much a 'partner in crime' is absolved from any liability. If the media organisations develop a more responsible approach towards advertising it will be a definite and healthy turn towards consumer welfare.

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[17] Singh, Gurjeet 'The Law of Consumer Protection in India – Justice Within Reach' (1996) Deep & Deep Publications New Delhi p332

[18] *Supra* n.14 at para 32

[19] The corresponding provisions in the Consumer Protection Act – sections 18 and 19.

Up to date in Sri Lanka there have been no laws or regulations dealing with advertising in a comprehensive manner. Therefore media institutions are given a free hand to carry out mass scale advertising with little or no specifications as to their duties and obligations towards the interest of the Consumer.[20] So far there has been one set of guidelines with regard to advertising.[21] It must be stressed that these too are mere guidelines and are not of binding effect, thus there is no enforcement mechanism. Further, these guidelines are only applicable to the two government owned networks, thereby leaving out the majority of media stations. It has been pointed out that 'The inadequacy of these provisions and the urgent need for the regulation of the advertising industry or for law reform (with provisions for proper implementation mechanisms), will become apparent upon examining the nature of modern marketing trends and strategies in relation to advertising, together with their legal effects and significance.'[22]

3.2.3 The Role of Consumer Organisations

It is undeniable that in making consumer justice a reality, the role to be played by consumer organizations is massive and irreplaceable. These consumer watchdog associations act as an interface between the aggrieved consumers and the manufacturers, as well as lobbying with the government in furtherance of consumer welfare. The vigor of consumers has a very definite positive correlation to the role played by these organizations.

One of the main functions of consumer watchdog associations is to create consumer awareness. These organizations carry the message of consumer rights to the masses and educate them as to how and from where to obtain relief. Further, these organizations tend to act as a 'filter' which a consumer will first approach to state their grievances. In such an event the organization will advise the consumer as to the proper course of action to be followed. This helps in deterring frivolous complaints. In addition consumer organizations attempt to communicate with the purported wrongdoer to make an attempt at mediating in the dispute. The final step would be to advise the consumer as to the procedure for filing a formal complaint. Therefore, the successful functioning of consumer organisations will result in reducing to a great extent the burden on the consumer court or the authority.

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[20] For an in depth discussion on the need for law reform in the area of advertising, specially in the light of modern developments with regard to advertising refer, Fernando, Yuresha '*Modern Advertising, Trade Puff or Deception? – The Need for regulation*' (unpublished).

[21] The Sri Lanka Rupavahini Corporation - Code of Advertising Standards and Practice. This code was formulated in 1982 and was last revised on 10th November 1985

[22] *Supra* n.20 at p 16 where the author analyses the prevailing Code and points out the defects that give rise to an urgent need for law reform.

A strong activist consumer organization puts considerable amount of pressure on business organizations. To be fair, it must be noted that globally many businesses today have made an effort at protecting the consumers, the society and the environment.[23] This form of business culture is sadly lacking in Sri Lanka. One of the main reasons for this is the lack of a strong consumer movement. A powerful consumer organization could prove to be an extremely effective method of refining business practices for the benefit of the community and is far more effective than the iron fisted stoicism of the black letter law.

The consumer organizations in Sri Lanka are very much dormant. Although there are a considerable number of such organizations in existence, these are clearly inactive. The severe lack of funds is the main reason why these organizations are handicapped today. The organizations state that the consumers are reluctant to make contributions, in labour or financially, towards the operation of these organizations. A genuine consumer watchdog organization, with no unwarranted affiliations to national politics or the business sector, will find it difficult to survive due to the severe lack of resources.[24]

Consumer organizations are normally dependent on the proactive participation of consumers. However, we cannot ignore the reality of our consumer base, as a large majority live below the poverty line. After all, consumer justice will never feed empty stomachs. On the other hand does this mean we accept that consumer justice is yet another luxury with a price tag beyond the reach of the vast majority of Sri Lankans? One proposition to activate these consumer watchdog associations is government assistance. Sec 33A(3) a of the Consumer Protection Act of 1979 and also the proposed Consumer Protection Authority Bill has provisions[25] where the government is to provide assistance and promote consumer watchdog associations. Further, the consumer watchdog organisations too must strive harder to reach out to the consumers. Unless these organisations win the confidence of the consumers, the road ahead for consumer justice will be a much more torturous one.

4. Conclusion

Can there be any respect for law, if little Sri Lankans in their large numbers see no justice within their reach? As Gurjeet Singh very correctly points out, small matters for one may be a large

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[23] Such a trend is seen in most developed countries with especial emphasis on sustainable consumption. The vibrant consumer movements have exerted pressure upon the business community resulting on the alteration and development of business practices. For more information on these campaigns see ww.consumerinternational.org

[24] Personal interview conducted with the President National Consumer Watch.

[25] Sec. 51 (3) (b) provides for the allocation of funds for '...the promotion, assistance and encouragement of consumer organizations and administration and development of such organizations;'

matter to another. After all, the intensity of one's grievances is very much a subjective issue. To quote Singh 'The utter sense of hopelessness of the duped 'little Indian' who sees no remedy for petty fraud is in the same category as the frustration of the urbanite 'activist' with the inefficiency of international connections and conventions. Both are frustrated consumers of justice...'[26]

Today in most countries, the Consumer protection laws come with extra sharp teeth of corporate criminal liability. Thus, a company that violates these laws not only attracts civil liability for damages, but also exposes its officials to criminal liability. Scholars point out that factors such as economic recession, the growth and expansion of transnational companies and contemporary anxieties on environmental protection justify the severe penalties.[27]

Finally it must be stressed that, to facilitate the smooth operation of any tribunal the political will is a crucial factor. The authorities that are vested with the power to look in to consumer complaints must consist of individuals appointed without political favouritism. It should comprise skilled persons of high calibre willing to perform a duty without fear or bias. Further, such authorities should be equipped with sufficient funds to ensure that the consumers are provided with the best possible safeguards. The ideal mechanism for resolving consumer complaints would be informal tribunals working at regional levels, which are exclusively established to further consumer welfare. The basic feature of such a system would be that of being 'consumer friendly' which includes low cost, high speed and a hassle-free procedure.

Access to justice is no luxury. It is the bare minimum any State-even one starved of resources like Sri Lanka-must provide. There is no justifiable excuse for the silent protests of the Sri Lankan consumers to fall on deaf (y) ears any more. The time is well nigh that consumer rights are not only recognized but are given effect to as well.

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[26] *Supra* n.17

[27] Brown Ian - 'Corporate Criminal Liability and Consumer Protection' 1993 Lloyd's Maritime & Commercial Law Quarterly p 158

Reference

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6. Consumer International Website: www.consumerinternational.org; http://www.law.osaka- u.ac.jp/~kagayama/Consumer/ Documents/UNGuidelinesE. html#Guidelines

7. Legislation: The Consumer Protection Act No. 1 of 1979, Sale of Goods Ordinance No. 11 of 1896, Fair Trading Commission Act No. 1 of 1987, Unfair Contract Terms Act No 26 of 1997.

Technical Error: Development of Technology but not of the Law

Dulip Samaraweera[*]

Introduction

The use of computers is no longer an area of activity reserved for a group of specialised persons but an inherent part of commercial activity and daily life. The wide acceptance of computers and the electronic era over the last two decades has led to many changes in the business environment, including changing the work patterns as well as providing a tool for gaining a competitive advantage and improving efficiency.

Although computers and information technology has facilitated the growth of commerce to a large extent, it has also introduced a new element of risk to organisations and individuals. A large amount of data and information which was previously dispersed, is now concentrated at a few locations. Further, these information repositories could be accessed by any person having access to the relevant computers or data stores. The loss that would be accrued due to an attack on such a system, would be in the form of the cost of damaged equipment, value of lost data, value of "Trade Secrets", value of money and effort spent on assessing damages, value of the effort of recovering or repairing damaged or lost information and equipment, and loss of revenue from activities that would have generated revenue if not for that particular incident.

Computer Crimes

The number of computer crimes committed, has increased not only in number but also in magnitude with time, and could broadly be classified into two categories:

a) Crimes facilitated by a computer; and
b) Crimes where the computer is the target.

Crimes facilitated by computers occur when computers are used as tools for the purpose of committing crimes. This includes *inter alia* the production of fraudulent documents and unauthorised reproduction and distribution of copyrighted material.

Crimes where the computer is the target differ greatly from traditional crimes due to the intangible nature of the crime, and the nature of the evidence. These crimes range from invasion of ones privacy, to creating loss and damage to data and information stored in a computer system

[*] Research Assistant, Law & Society Trust.

and at times, damages to the system itself. Due to the technology involved and the very nature of the environment, it is much harder to identify as to from where or by whom the act was committed and to accurately assess the extent of loss or damage.

The Need for Protection from Computer Crimes

Currently in Sri Lanka, it is estimated that the level of computer penetration is 0.79% per100 inhabitant. There are 33 operators who are licensed to provide Internet services, servicing a clientele of approximately 62,000 Internet accounts, which over the past two years have grown at a rate of approximately 65%.[1] As such, this gives rise to the need to regulate and protect the users of computer systems as well as the service providers.

Further, it has been the policy of the government to promote and encourage the use of information and communication technology as an area of high priority for social development and as the engine of growth of the national economy, which is aptly demonstrated through the National Information Technology Policy and the Draft National Telecommunications Policy.

One of the objectives of the National Information Technology Policy of 1983 is to:

> *"Harness computer technology in all its aspects for the benefit of the people of Sri Lanka, and to further the socio-economic development of the nation."*

While one of the objectives of the Draft National Telecommunications Policy is:

> *"Creating the conditions for businesses located in Sri Lanka to engage in all forms of electronic commerce using state of the art Information and Communication Technologies (ICTs), and thereby creating skilled and rewarding employment for Sri Lankans;"*

With a view to achieving its objectives, the Draft National Telecommunications Policy advocates:

> *"Creating the conditions for adoption of cutting edge, convergent ICTs centred on the Internet, including the shift to Internet Protocol based, multimedia capable networks;"*

[1] As per the Telecommunications Regulatory Commission of Sri Lanka, April 2001.

Further, representations have been made by the business community to the relevant institutions regarding the need for a legal framework for the development and sustenance of the IT industry and commerce, as well as for safeguarding the interests of the user community. This is due to the fact that the current practice amongst many is not to report crimes in order to prevent an explosion of copycat crimes, since the law is incapable of remedying the situation.

Protection from Computer Crimes

The National Computer Policy for Sri Lanka, formulated in 1983 by the Natural Resources, Energy and Science Authority (NARESA), had at that early stage itself identified the need for a legal framework pertaining to the regulation of the use and abuse of information technology and computers and their impact on society.

The Evidence (Special Provisions) Act no. 14 of 1995 amended the Evidence Ordinance of 1895 to cope with the issues that were arising due to the advancement of information technology, whereby information produced by computers and other electronic devices were made admissible as evidence in a court of law. To some extent, offences which could be categorised under "crimes facilitated by a computer", such as forgery are addressed by the penal code, and acts such as unauthorised reproduction of copyrighted materials are addressed by copyright laws, namely the Intellectual Property Act No 52 of 1979.

Further, the amendment to the Intellectual Property Act[2] in the year 2000 recognises computer programmes[3] as capable of being copyrighted. This provides some form of relief to an industry starved of official protection, particularly from unauthorised reproduction and from outright piracy.

However, the law as it stands today provides little or no protection against acts where the computer is the target of a crime. This gives rise to the urgent need for the introduction of laws to remedy this situation and to provide assurance to the citizens and the business community of the country.

The Proposed Computer Crimes Bill

In July 2001, the Ministry of Justice tabled the Computer Crimes Bill in Parliament. This Bill was expected to fulfil the much felt need of providing protection to computer systems, but it did not see the light of day as legislation, due to the suspension and later on dissolution of Parliament.

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[2] Intellectual Property (Amendment) Act No. 40 of 2000.

[3] The Intellectual Property (Amendment) Act No. 40 of 2000 defines "Computer Programmes" as "a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that a computer can read, of causing the computer to perform or achieve a particular task or result."

The proposed Computer Crimes Bill[4] proposes to recognise many acts which were previously not considered as criminal offences, in an attempt to curb the rising number of computer crimes and to provide a remedy to those who are affected by such acts. A prominent feature of the Bill is the use of broad definitions. Although this creates opportunities for wide interpretations, it also makes the law flexible, which is necessary to cater to the manifestations of computer crimes which are dynamic and at times extremely innovative. This would contribute largely towards reducing the need to amend the law in order to accommodate changing situations.

The proposed Bill expects to cover offences ranging from illegal access to computer systems, programmes and data[5], misuse of devices[6], system and data interference[7], and illegal distribution of materials obtained by committing an offence criminalized by the Bill.[8] In addition, aiding and attempting to commit such activities that are recognised as crimes by the Bill are also considered offences.

Other Protection Available

Although the proposed Bill for combating computer crimes could remedy some of the shortfalls of the legal framework, it does not address the issue of maintaining the confidentiality and integrity of information stored within a computer system. Neither does it address the issue of guaranteeing the use of such information solely for the purposes for which they were originally obtained, in instances where the onus of providing such guarantee lies with the administrators of the system. At one stage, an effort was made to formulate laws to remedy this situation, by way of introducing a Data Protection Act. However, this activity has since come to a standstill.

In the absence of any legal framework towards preventing the abuse and maintaining the privacy of data and information stored within a computer system, the provisions laid down under Article 6.3 (on Fraud Prevention and Privacy Protection) of the Draft National Telecommunications Policy could be viewed as a ray of hope, which reads;

> *"The TRC[9] is responsible for protecting consumers of telecommunications services from unfair and deceptive marketing practices, and from unwarranted use of private customer information."*

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[4] Published in Volume 12 Issue 166 of the LST Review (August 2001).
[5] Clauses 2 and 3.
[6] Clauses 4, 5, 7 and 9.
[7] Clause 6.
[8] Clause 8.
[9] Telecommunications Regulatory Commission.

However, the powers of protection that can be extended by the TRC are limited to the telecommunications industry alone. Further, since it is only a policy, it would not be enforceable in a court of law. Thus it is but a poor substitute for stringent legal provisions on data protection.

Obscene Publications

The digital media has come under severe criticism with regard to the publication and distribution of indecent and obscene material, especially in relation to child pornography. The state of lawlessness and the lack of conventional ethics on the Internet has been the main cause of this and it continues to encourage the use of the Internet for nefarious activities. Further, the difficulty of tracing the culprit over the Internet has provided an additional incentive to continue using the Internet for such activities.

The question of deciding whether the problem needs to be addressed at the stage where the material is either published or distributed, or at the stage of origin or whether these are activities which need to be addressed on a case by case basis is one which requires careful deliberation. But this is a matter which needs to be addressed urgently to prevent further abuse.

As far as regulating the publication or distribution of obscene materials via information and communication technologies is concerned, the only regulatory standards available are the provisions under section 17(2) of the Telecommunications Act[10] that set out the conditions under which licences are issued to telecommunication operators. This section prohibits the operator from undertaking to transmit materials of an obscene nature, and section 58 of the said Act makes liable any person who tenders materials of an obscene or indecent nature for transmission.

Reporting and Investigations

Carrying out investigations on technology crimes is one which requires specialised competency, and as things stand today, there is no specialised institution dedicated towards curbing or carrying out investigations in IT related crimes. Currently, most such incidents are not reported, and the incidents that are reported are being investigated under the guidance of the Police IT Division, and by the Commercial Crimes Investigations Unit (CCUI) of the Criminal Investigations Department (CID). As there are no specific legal provisions relating to computer and IT crimes, the investigations are geared toward proving an attempt at forgery or cheating,

[10] Telecommunications Act No.25 of 1991 as amended by act No. 27 of 1996

wherein the computer has been used as a tool. But this can be effective only if it could be proved that any loss or damage was caused. To date, no one has been so prosecuted.

Under the provisions of the proposed Computer Crimes Bill, it would be possible to prosecute offenders directly under the offence committed, and the police could also request the services of experts, who will be appointed in consultation with the Computer and Information Technology Council of Sri Lanka (CINTEC), as may be required to assist the investigations.

Harmonisation of International Laws

A prominent feature of computer crimes is the state of borderlesness of such acts. For example, a crime could be committed in Country A by a person in Country B of Nationality C, which brings forth the need for the harmonisation of laws among countries when dealing with advanced technological crimes. Therefore, law enforcers of all countries need to recognise the need for international co-operation in stemming the rising tide of High-Tech crimes and in bringing such offenders to book.

To facilitate such international co-operation, a high level of harmonisation of legal standards and provisions amongst nations would be called for. International instruments in this regard would help to achieve such harmonisation, and also to resolve disputes arising thereby. The Convention on Cyber Crime[11] of the Council of Europe is at present the foremost international instrument towards stemming the tide of cyber crimes, which would come in to force upon being ratified by a minimum of five nations, of which at least three needs to be member states of the Council of Europe.

Conclusion

It is obvious that there exists a crying need for a sound legal framework for protection from technology crimes. The legal protection extended towards safeguarding computer systems and their primary functions needs to be comprehensive and progressive. It needs to take in to consideration the fact that information technology is an industry that evolves rapidly, and therefore the laws need to be technology neutral to keep it from becoming obsolete along with the technology.

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[11] http://conventions.coe.int/Treaty/en/Treaties/Html/185.html

The law should seek to:

a) Win the confidence of the public and of the business community that it is capable of providing protection to their rights and also effective redress when their rights are violated.
b) Protect the computer systems or networks and the data stored within them from being used by unauthorised persons;

c) Prevent the data being used for anything else other than the purposes for what it was originally collected if it contains information of personal nature, unless with the prior consent of the person to whom the information relates to;

d) Provide the required framework and safeguards for the development of electronic commerce and to ensure the expeditious solution of disputes and dispensation of justice.

Further, it should be oriented towards enhancing and enriching the possible benefits of IT for the development of social conditions and of commerce and should not be a hindrance to such.

Adequate resources need to be made available towards setting up specialised institutions to conduct investigations relating to computer crimes as well as to train officers who would then be equipped with the required technical competencies that are needed to carry out such investigations. The public needs to be made aware of the institutions to which they can report a suspected technology crime and the procedures that need to be followed. Especially since most of the evidence would be in intangible form, the need for special care must be stressed in order to make sure that the evidence is not rendered useless.

Judges should be made aware of the forms of technology crimes and the consequences of such actions, as computer technology and the technical terms used to describe some of the related functions could lead to confusion. (i.e. hacking, spoofing). Further the law needs to be flexible in terms of dealing with first time offenders, especially with regard to instances of unauthorised access to computer systems, for more often than not, this is viewed by youths who do not understand the gravity of their actions, as a challenge rather than an offence.

Legal Education in Sri Lanka

Naazima Kamardeen[*]

1. Introduction

Legal education in Sri Lanka today is provided by many institutions, both local and foreign.[1] Each caters to a particular type of student and learning requirement. While some courses are designed primarily to facilitate the practice of law, there are others that are structured so as to provide a theoretical basis for the study of law. Some others attempt to combine elements of both, providing to the student some knowledge of the practical as well as the theoretical skills that go into the formation of a good lawyer. This paper seeks to chart the development of legal education as a formal subject in Sri Lanka, by outlining the contribution made by the three local institutions – namely, the Sri Lanka Law College, the Law Faculty of the University of Colombo, and the Open University of Sri Lanka.

2. The Need for Legal Education in Sri Lanka

Legal education in Sri Lanka began as apprentice training, and hence, stressed on practical skills. There was no formal education, or a course of study as such. One of the most important points in the history of legal education in Sri Lanka was the promulgation of the Charter of Justice of 18th April 1801. This created a Supreme Court of Judicature. As there were no local persons who were qualified for the job, the judges were all "imported" from either the English or Irish Bar. The Charter also empowered the Supreme Court to admit and enrol advocates and proctors and to make rules for their admission. With this, it became important to have an organised legal profession.

The Charter of 1833 clarified this position by empowering the Supreme Court to admit and enrol persons "properly qualified" as proctors and advocates to practise before it and before the newly created District Courts. New rules were then drafted for the purpose of admitting persons who were "properly qualified". These provided training in the form of "apprenticeship", which was the procedure followed in England at the time. The period of apprenticeship was five years. On completion of his training, the student who intended to be a proctor had to pass an examination held by a Judge of the Supreme Court in the following subjects: General Principles of Roman

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[*] LL.B (Hons) Colombo, Visiting Lecturer, Faculty of Law, University of Colombo, Research Assistant, Law & Society Trust.

[1] External degree courses from foreign universities are available with institutions such as the British Council and the Royal Institute, to name a few.

Dutch Law, the provisions of the Charters, Rules and Orders of Court, and the usages of that part of the country in which the applicant intended to practise. The students who intended to be advocates were tested, in addition, on their knowledge of the English and the Roman Laws. They had also to display "classical attainments and general principles of a liberal education."

The Legal Practitioners' Ordinance, enacted in 1843, required the Registrar of the Supreme Court to issue a certificate to advocates and proctors on their admission, certifying such admission and specifying the court in which such person is admitted to act. It further provided for the annual registration of practising proctors.

By 1858, the Supreme Court had delegated, to a Board of Examiners, its power of holding examinations for admittance into the profession. New rules came into being. The prospective lawyer now had to be sponsored by at least one of the Judges of the Supreme Court, and was precluded from engaging in any other profession or occupation than the study of law. It is at this juncture that we see the birth of the first institution of legal education in Sri Lanka – the Ceylon Law College.

3. The Council of Legal Education and the Ceylon Law College

In 1874, the Council of Legal Education was established, to examine and train law students. The Ceylon Law College, which commenced in 1884 under the management of the Council, formulated a course of lectures which provided for systematic instruction in legal subjects, to be supplemented by a subsequent period of apprenticeship. The Courts Ordinance No. 1 of 1889 introduced changes that were incorporated into the syllabus of the Law College. As a result of these changes, students had to sit a preliminary examination before enrolment, and another examination at the end of three years. The period of apprenticeship was reduced to six months.

By 1911 the Ceylon Law College had been established at its present site in Hulftsdorp in Colombo, close to the Superior Courts Complex. The curriculum was revised in 1920. Accordingly, there were three examinations (Preliminary, Intermediate and Final) to be taken at the end of each academic year. Advocate students would have an apprenticeship period of six months, while those hoping to be proctors had to apprentice for a year under a senior proctor. This system prevailed until the fusion of the two branches in 1974. Today, students seeking entry to the Law College must have passed the GCE Advanced Level Examination, to qualify to sit the entrance examination. This examination is highly competitive, due to the large numbers

that sit, compared to the few places that are on offer.[2] The entrance examination previously consisted of two papers – a general intelligence paper and a language paper. Now, there is just one paper, which is on law.

3.1 Student Profile

The establishment of the Council of Legal Education made it possible for English- educated Ceylonese to enter the profession, without having to incur heavy costs. It was now no longer necessary to qualify in England, though some that could afford it did so. With the switch to *swabasha*[3], the student profile gradually altered to accommodate more students who were fluent in Sinhala or Tamil, as opposed to English. At the Law College, a policy of bilingualism has been followed since 1971. Even today, some subjects are taught either in Sinhala and Tamil or in English. Students may take the entire examination in any language they wish, or take different subjects in different languages.[4] Though the education provided by the Law College is not free, it has been noted that the student composition now is more heterogeneous than it was in the fifties and sixties.[5]

From the very inception of formal legal education in this country right until the 1930's, the legal profession was confined to males. The Law College did not entertain applications from female students. It is reported that when such an application was in fact made for the first time in 1919, it was rejected![6] The Sex Disqualification Removal (Legal Profession) Ordinance No. 25 of 1933 took away this disability, and since then, the numbers of women have been on the rise. They now account for more than fifty percent of the entire student population at the Law College.

3.2 Teacher Profile

Since the Law College has always aimed to produce the practicing lawyer, the lecturers too have almost exclusively been practising lawyers themselves. However, following the Report of the

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[2] It is estimated that about 7000 –8000 students take the examination, out of which only about 250-300 will be taken, depending on how many students achieve the cut-off mark.
[3] The native languages of Sinhala and Tamil
[4] This is different from the Law Faculty, where the same course is taught in Sinhala, Tamil and English and the student may opt to take the examination in any one of these languages. However, it must be noted that a student may not sit for an examination in more than one language.
[5] Gomez, Mario ***"Legal Education for Social Change"***, Law & Society Trust (1993), at p. 29
[6] Gooneratne, U.A ***"The Legal Profession of Sri Lanka – Some Aspects of its History, Position and Organisation"*** Bar Association Law Journal (2000) Vol. VIII Part II, pp. M2 –16, at p M7.

Advisory Committee of the Council of Legal Education, which was submitted in 1990, the College began recruiting permanent staff. It is reported that the salaries offered to these lecturers are slightly higher than that of the permanent staff at the State-funded Faculty of Law.[7] The rationale for recruiting permanent staff was that a better quality of education would be imparted to students, in certain areas that are considered non-practitioners' subjects.[8]

3.3 Recommendations and Reform

As a result of representations made to the Chief Justice, the Council of Legal Education appointed a committee to look into, and suggest, reforms for legal education. The Committee presented a comprehensive report[9], which was accepted almost *in toto* by the Council. However, it appears that apart from a few reforms, a good number of the recommendations have remained unimplemented.[10]

4. The Need for University Legal Education

Until 1947, legal education in Ceylon was confined to the course of study offered by the Ceylon Law College. The focus of the Law College has always been on producing the practising lawyer. In the 1920's, however, the limitations of the type of education provided by the Law College became evident to legal reformists in the country. They realized that the largely vocational training given by part-time teachers at the College did not provide the fundamental basis of training for law, which could later serve as a point of departure for the development of special subjects, interests and skills. Further, they argued that the object of the law schools should be

> *"not to produce a short-term professional competence, but to inculcate a scientific legal training, which must serve as a basis for a whole lifetime in a profession calling for the most varied skills".*[11]

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[7] *Supra*, fn 3, at p.31

[8] These would include subjects such as International Law, Jurisprudence, and Legal Systems.

[9] Entitled ***"The Report of the Advisory Committee of the Council of Legal Education"***, the report dealt exhaustively with the need to expand legal studies, and recommended changes to the syllabus, including the format of the examination system and teaching methods. Extracts of the Report are found in the Law & Society Trust Fortnightly Review, 16th November 1991.

[10] For example, the proposals relating to the revamping of the lecture system, the conducting of an English proficiency examination, the regulation of examinations and the conducting of extra-curricular activities in an organised manner, have yet to be attended to. Though the Law College boasts of a Moot Society and has various other societies that attempt to conduct extra-curricular activities, they are sporadic in nature, and do not facilitate long-term, systematic training in those skills. Furthermore, the Legal Aid Clinic, which was started as a result of the proposals, has also not achieved its goals; rather, it has been used by apprentices as another project that will help them to get the requisite number of marks for their course in Practical Training. Once this is completed, and they are enrolled as Attorneys-at-law, the Legal Aid Programme is invariably forgotten, or becomes unimportant. The file is usually handed over to someone else, which does not augur well for the quality of work put in towards the case.

[11] Prof. T Nadaraja, ***"Objectives in Legal Education"***, XIV University of Ceylon Review (1956), pp 92-104, at p 99.

The basis on which this argument was founded was the idea that if students are merely taught a set of facts, or a type of procedure, they are limited to what they have learnt, while if their minds are trained in the necessary skills required to be a lawyer, they will be able to respond and adapt to the ever-changing demands of the legal profession.

Chief Justice Sir Anton Bertram had suggested, in 1923, that the major part of the instruction of law students should be transferred to a Faculty of Law at the proposed University of Ceylon, leaving the Law College to provide a postgraduate course of instruction in the more practical subjects like Procedure, Evidence and Conveyancing. Though the Council originally agreed to this proposition, they subsequently decided that even if such a Faculty of Law ever came into being, the Law College would continue to provide a complete course of study and training for law students.

4.1 The Department of Law (1947 – 1967)

In 1942, the University of Ceylon was established. Sir Ivor Jennings was its first Vice-Chancellor. In 1947, he established a Department of Law in the Faculty of Arts. So, the Faculty of Law of the University of Colombo had its humble beginnings as the Department of Law in the University of Ceylon, Peradeniya, with only one full-time lecturer![12] The first Law degrees were awarded in 1950. Law graduates were not required to attend lectures at the Law College, and needed only to sit for the Final Examination, and a few subjects in the First and Intermediate examinations which they had not offered at the University.[13] By this time, the Department of Law increased its staff to five full time lecturers. It also attracted some of the best students from the leading urban schools.

4.2 The External Degree Programme

In 1961, following a directive from the Ministry of Education, the Department of Law introduced the external degree programme. This was in order to provide access to university education for students who were off campus. External students did not attend regular lectures, but took the examination after private study. While this provided a good opportunity for students who could not attend regular lectures due to work or other commitments, it also increased the burden on the

[12] This was Prof. T Nadaraja, who subsequently became Dean of the Faculty.
[13] Unfortunately, this has led to an unhealthy narrowing of options at the Faculty of Law, as students prefer to finish off at the Faculty, the First and Intermediate year subjects which they would otherwise be compelled to take at the Law College, in addition to the Final Examination.

Department, which had to cater to external examinations as well. The Department of Law was moved from Kandy to Colombo during this time.

4.3 The Establishment of a Separate Faculty of Law

After functioning as a Department in the Faculty of Arts for about 20 years, Law became a separate Faculty in 1967, with Professor T. Nadaraja as its first Dean.[14]

4.4 The Language Policy

In 1972, the Faculty of Law received a directive from the Minister of Education to provide courses of instruction in the national languages, Sinhala and Tamil. At that time, there was little or no legal material in these languages, and hence, formulating syllabuses proved to be difficult. As a result, several important subjects such as Public International Law, Conflict of Laws and Commercial Law had to be dropped from the curriculum altogether, as there were no lecturers who could teach those subjects in Sinhala and Tamil, and policy considerations prevented the Faculty from offering any subject only in English.

Due to the language policy, classes and examination were held for every subject in all three languages. While this move took away the elitist character of legal education, it was felt that the quality of legal education provided, took a downward turn.[15] Further, in the absence of research and analytical material in Sinhala and Tamil, students had to rely almost exclusively on what was taught in class, putting the lecturer in "the unaccustomed role of lawmaker!"[16] Nevertheless, the Faculty of Law rose up to the task, and continued to provide legal education in all three languages, and was gradually able to find lecturers who could teach in Sinhala and Tamil. Thus, courses were expanded, and today, no subject is left untaught due to a lack of teachers in any language.[17] The Faculty of Law is currently the only Faculty in the country that conducts the course in all three languages.[18]

4.5 The JVP Uprising and the Disruption of University Education

The JVP[19] uprising in the late 1980's affected the universities in no small way. The civil, political and social activity of the Sri Lankan community was virtually brought to a standstill.

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[14] Prof. Nadaraja had been functioning as Dean prior to 1967, even before Law became a separate faculty.
[15] The Convocation Address 1984, delivered by Prof. T. Nadaraja on 15th December 1984, at p 7
[16] *Ibid.* at p.7
[17] Rather, some optional subjects are not taught because there are no students willing to take those subjects in a particular year.
[18] ***"A Guide to New Students"*** (Academic Year 2000/2001) Faculty of Law, University of Colombo, at p. 4
[19] ***Janatha Vimukthi Peramuna*** – a political party with strong Leftist tendencies.

Since university students were regarded to be at the centre of the JVP movement, universities were closed indefinitely. Once the uprising was quelled and universities opened, there was a backlog of students, some of whom had been waiting for up to 3 years after their Advanced Level examinations to get into university.

With the aim of reducing the backlog, the Faculty of Law took in its first double batch in August 1995[20], and has recently taken in another double batch.[21] Thus, the Colombo University has been able to reduce the waiting period to about one year. Double batches, of course, put extra pressure on the Faculty, because of the problems of resource allocation. It becomes more difficult to access books and material for research, as these have to be shared among twice the usual number. The opportunity for active participation by students at lectures is also reduced, especially in the Sinhala medium, where the number in a double batch is close to three hundred!

4.6 Re-structuring of the LL.B Degree Programme

The LL.B degree programme was revised extensively and presented for the first time in the academic year 1996/1997. For the first time, continuous assessments were introduced. Students were required to submit two assignments on a pre-set question for each subject. The assignments account for 30% of the overall marks for each subject. The year-end examination accounts for the remaining 70%. New subjects such as International Investment Law, Business Law, Humanitarian Law and Intellectual Property Law, were introduced. The number of lecture hours in certain subjects was also reduced in order that students have more time to engage in independent research and study.

With the objective that students should learn at least one subject that would enable them to be socially responsible citizens, Environmental Law and Human Rights Law have been made compulsory electives in the Final year.[22] In addition, Legal Method was introduced as a first year subject. The aim of this subject is *inter alia*, to give the students an understanding of the

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[20] This was done to accommodate the batches of 1993/1994 and 1994/1995

[21] Combining the batches of 1999/2000 and 2000/2001

[22] ***"A Guide to New Students"*** (Academic Year 2000/2001) Faculty of Law, University of Colombo (2000), pp. 7-9. The paradox merits explanation. It is compulsory because at least one subject **must** be chosen. It is elective because students may choose one subject of the two. Students are also given the option to do **both**, if they so wish.

role and function of law, as well as some knowledge of legal history, the legal profession, and the methodology of conducting legal research.[23]

4.7 The Golden Jubilee of the Faculty of Law

The Law Faculty celebrated its fiftieth anniversary with a series of activities, the highlight being the academic sessions organized by the Faculty in association with the International Women's Rights and Action Watch (Asia Pacific). The theme for the sessions was "Transition: The Post Independence Changes and the Future; Critical Issues of Law and Justice in South Asia". The sessions focused on Human Rights and Constitutional Reform, Family and the Community, Law and Development, Roman-Dutch Law, Developments in the Post-Independence Period, Information Technology and New Directions in the Law, and Reception of International Law and Domestic Jurisdictions. Several delegates from the South Asian region, as well as local and international scholars attended the sessions. Justice C.G. Weeramantry[24] delivered the keynote address at the Inaugural Sessions, while Professors T. Nadaraja and G.L. Peiris, former Deans of the Faculty, were the guests of honour. Several students from the Faculty were selected to participate at these sessions.

4.8 The Alumni Association of the Faculty of Law

The Alumni Association of the Faculty of Law[25] has initiated an internship programme for undergraduates. Under this programme, students are interviewed and then chosen to follow an internship of 1-3 months at law firms, mercantile institutions and with practising lawyers.[26] The Mentor Programme, which is another Alumni project, helps undergraduates to make and maintain contacts with senior lawyers. These contacts would then benefit them in future, when approaching senior lawyers and firms for apprenticeship. Recently, the Alumni Association assisted the English Department of the Faculty of Arts to provide a short course in English, which was designed primarily for law students.[27]

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[23] Since it is concerned basically with legal methodology, it is a non-credit subject. This means that the grade achieved in this subject does not contribute to the student's overall performance. It is currently the only non-credit subject in the curriculum.

[24] The then Vice President of the International Court of Justice

[25] Begun in 1998.

[26] The internship is done during the end of term vacation, which is usually from June to August.

[27] Conducted in April 2002, the course covered topics such as drafting, conducting meetings and interview technique, and was conducted by Justice Mark Fernando, Mr. Mohamed Adamaly, Attorney-at-Law, Mr.Nithi Murugesu, Attorney-at-Law and Mr. Michael Ranasinghe.

4.9 The Faculty Today

The Faculty consists of one Professor, one Associate Professor, a number of Senior Lecturers, Lecturers and Probationary Lecturers. The Centre for the Study of Human Rights (CSHR) and the Centre for Policy Research and Analysis (CEPRA) are two institutions set up within the Faculty, to facilitate and promote research in selected areas of study.

5. The Open University

The Open University of Sri Lanka is the only other local institution (apart from the University of Colombo) to offer a degree in law. This University has carved a place for itself within the educational system of this country as a university of the "later chance", as it provides students who are working or otherwise occupied, a chance to obtain an educational qualification mainly in their own times and in their own homes, without having to attend lectures at times when they would be at work.[28] The Open University, which was set up under the Universities Act No. 16 of 1978, has the same legal and academic status as any other university in Sri Lanka. It has its own Council, which is its governing authority. It has a central campus, its own full time staff and prepares its own courses.[29]

5.1 Course Structures

The academic courses offered by the Open University lead to a Certificate, Diploma or Degree. Since it is primarily a distance education university, emphasis is laid on Assignments and Reading. The Open University conducts a "Continuous Assessment" system, where students are required to submit a specific number of assignments, which are graded and returned to them, along with the comments of the tutor. The assignments could take the form of take home assignments, closed book tests, project reports or open book tests. Students must obtain a pass in the continuous assessment component (which accounts for 30% of the final mark) if they are to gain eligibility to sit for the final exam (which accounts for the balance 70%).[30] The University also provides reference facilities for the students, and encourages students to make use of the libraries, as this is seen as an important aspect of the study system.[31]

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[28] Brochure on Bachelor of Laws Degree and Bachelor of Arts In Legal Policy Degree 2001, Open University of Sri Lanka, Open University Press, at p. 2.
[29] *Ibid.*
[30] *Ibid.* at p. 5 (Note the similarity between the Open University course structure and the revised course structure of the Faculty of Law).
[31] *Ibid.* at p. 6

5.2 Legal Education

The Department of Legal Studies has been offering the LL.B degree programme since it commenced in 1984/1985. It seeks to combine legal orientation with some of the basic philosophies of distance education. It also offers a Bachelor of Arts in Legal Policy Programme, for those who wish to combine law and sociology. A student has to obtain the requisite number of credits in order to be awarded the degree. Since most students are otherwise occupied, they are advised not to register for more credits than they can handle per year.[32] It takes a minimum of five years to complete a degree at the Open University.

5.3 Eligibility

In order to be eligible to apply for registration as a student of the Open University in legal subjects, students should have either completed a Foundation Course at the Open University, or obtained four passes at the GCE Advanced Level Examination. The Senate has the discretion to accept a student with an equivalent or higher qualification.[33] In addition, students who are required to follow the English language programme will not be awarded their degrees until they obtain a pass in English.[34]

6. Conclusion

6.1 The Future of Legal Education in Sri Lanka

There seems to be consensus among the legal fraternity that we need to equip the modern lawyer in the requisite legal skills that will help him/her to meet new and varied legal situations. The legal issues involved in the rapid growth of the cyber world, in which area there is still no instruction at any of the local law schools, should remind us of the fact that we need to constantly review and update our syllabuses and the subjects we teach, in order to make legal instruction relevant for future practice, rather than allow it to remain as a copious set of notes to be memorized in order to pass an examination.

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[32] *Ibid.* at p. 7
[33] *Ibid.* at p. 8
[34] *Ibid.* at p. 10

The lack of co-ordination among the institutions that provide legal education has not helped the situation any. Subjects are sometimes duplicated, and the exemptions issue has also been contentious.[35] It is time the legal educationists in this country formulated a comprehensive policy to reshape the future of local legal education, so that the professional or academic that is finally produced will be able to meet and respond to the challenges of the twenty-first century.

[35] As much as the Law College has refused to grant any exemptions to law graduates in the Final Examination, the Faculty too has refused to grant exemptions to Attorneys-at-Law to follow the Masters in Law programme that was conducted by the Faculty of Law. The exemptions issue has now taken on a one-sided dimension, as the Masters Programme has not been conducted for over a year, due to the re-structuring of the syllabus. However, all law graduates who wish to practice must sit for all the subjects at the Attorneys Final examination, regardless of whether or not they have already offered it for the Degree.