

“A Double Edged-Sword?” Need of a Human Rights Law Framework for Scientific Research in Sri Lanka

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Abstract—scientific experiments and research are not novel concepts to developed nations. Major regional legal systems such as European Human Rights System have recognized such phenomenon and developed a strong human rights protection system. However, currently, although there is a trend in Sri Lanka towards scientific experiments the non availability of human rights based protection mechanism has posed a potential threat. Though there is an evolving Intellectual Property Law protection framework in the bio-medical research in Sri Lanka. Jurisprudentially, there is a gap between carrying out a scientific research and human rights protection; especially for research objects. Rights such as right to life, right to privacy and freedom of expression should be recognized in such a human rights law protection mechanism in scientific research in Sri Lanka. The main objective of the research is to focus on the human rights framework that is to be considered in scientific research in Sri Lanka. The secondary objective is to identify the main human rights concepts that are applicable in the above framework to introduce a bill on the above area. The research methodology is mainly the legal research method, which is based on the exploratory research design. A library based, secondary data review will be adopted by the researcher. However, the researcher will adopt qualitative research design, if the need arises in the confirmatory purposes. Therefore; the research methodology could be a mixed method. The research outcome is a research publication that will provide clear insights to legal institutions such as Sri Lanka Law Commission and the Department of Legal Draftsman to consider introducing a legal framework in scientific research in Sri Lanka. Therefore; in light of the research outcome, it could be introduced as a policy research.

Key Words- Human Rights Framework, Scientific Research, Policy Integration

I. INTRODUCTION

The main objective of the research is to focus on the human rights framework that is to be considered in scientific research in Sri Lanka. The secondary objective is to recognize the main human rights concepts in the United Nations System (Herein after the U.N. System)

that is applicable in introducing a domestic legislative enactment in the above area. The author specifically focuses on the General Assembly Resolutions on protecting human rights in scientific research. Further, it is to be focused on the positive aspects of the regional human rights mechanisms, where proposed Sri Lankan bill could adopt as possible implementation mechanisms.

The research problem seeks answers on the prominent areas to be included in a domestic legal framework which protect human rights in scientific research.

It should be noted that the research will not be covering the areas such as Intellectual Property Law or medical Law aspects.

II. SCIENTIFIC RESEARCH AND HUMAN RIGHTS IN THE U.N. SYSTEM

The U.N. System had been recognized the importance of protecting human rights since its inception. Due to the atrocities occurred during the Nazi-Germany era and having those painful and gloomy memories in mind, the U.N. focused on the strengthening the strong relationship between scientific research and protection of human rights.

The early attempts embedded in the Universal Declaration on Human Rights as early as 1948. However; until 1968, there was no direct dialogue on the protection of human rights in the field of human rights. However, Teheran Proclamation was adopted in Teheran Conference in 13th May 1968. It indicates that:

"While recent scientific discoveries and technological advances have opened vast prospects for economic, social and cultural progress, such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention."

It is evident that in a time period such as in 1960s, there were certain doubts on misusing of scientific research adversely on human rights. Terrors of the aftermath of World War II could be the main reason for the above indication.

International Covenant on Economic, Social and Cultural Rights (G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976) enshrined below mention rights such as article 12 (1) the right to enjoy highest attainable standard of physical and mental health, right to education article 13 (1), right to take part in cultural life and to enjoy the benefit of scientific progress and its application and to benefits from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Right to be free from torture or cruel, inhumane and degrading treatment article (7) is in International Covenant on Civil and Political Rights (G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976). The aforementioned developments occurred after adoption of Bill of Human Rights. By the time, human rights advocates realized the close relationship between scientific research and human rights.

Further, the following quote evident the same understanding on the "double-edge sword standard" on the relationship between scientific research and human rights in that era of the human civilization.

"Technological advancements have always been potential means in man's hand, and they have always served human requirements. And it is man who has to decide the ends to which science and technology shall be used. And as man is a social being, his steps taken in this regard reflect necessarily the advantages or inadequacies in the political, social and intellectual organization of society" (Premont et al., 1987)

The above quotation provides clear indications on scientist's prime responsibility in protecting human rights in scientific research.

United Nation's Commission on Human Rights adopted the Resolution 1986/9 of "Use of scientific and technological developments for the promotion and protection of human rights and fundamental freedoms." The draft resolution of the above discussed in-depth on both positive and negative impacts of scientific research and developments on human rights. By this time, most of the nations in the world recognized the relationship between scientific developments and human rights law as a "double-edged sword." (Kubota, 1987)

As discussed above, the resolutions of 1983/41 and also 1984/27 showed how effective science and technology could be in promoting human rights and fundamental freedoms. (Kubota, 1987) However, it must be accepted that it is not so used in the history and therefore, it is to be emphasized on the advantages and disadvantages of the relationship between human rights and scientific research. "Scientific and technological progress have laid highly important foundations for the realization of human rights. Nevertheless, the fact cannot be ignored that technological developments have and will no doubt continue to have consequences which affect respect for human rights (E/CN.4/1984/28). Having the above mentioned framework in mind, it is to be focussed on the key areas for the legal framework to protect human rights in scientific research in Sri Lanka.

III. NEED OF A LEGAL FRAMEWORK FOR SRI LANKA

Sri Lankan legal framework has not yet given a proper recognition for the relationship between scientific research and human rights. Right not to be tortured has been recognized as a fundamental right in the 1978 Constitution; nevertheless, it is not sufficient to address issues which could be come across. At the same time, Sri Lankan Constitution has not guaranteed the Economic, Social and Cultural Rights. Therefore, it should be noted that there is a potential threat in the future for the protection of human rights in scientific research in Sri Lanka. Hence; it is timely to adopt a bill with relation to human rights and scientific research.

Though Sri Lankan scientists are not yet engaged in genealogy or cloning, chances are very high which in the recent future, such technological advancements to be taking place. Therefore; the need of a human rights law framework in scientific research is a timely solution to resolve the above matter.

IV. COMPONENTS OF THE HUMAN RIGHTS FRAMEWORK FOR SCIENTIFIC RESEARCH IN SRI LANKA

This part of the research paper will recognize the area to be incorporated in the proposed Sri Lankan legal framework on protecting human rights in scientific research.

Firstly, the U.N. General Assembly Resolution 2450 (XXIII) of 19 December 1968, provides far-reaching insights for any individual jurisdiction a clear path for incorporating the protective tools to oversee the relationship between scientific research and human rights law in a legal framework. It is as follows:

- (a) Respect for the privacy of individuals and the integrity and sovereignty of

nations in the light of advances in recording or other techniques;

(b) Protection of the human personality and its physical and intellectual integrity, in the light of advances in biology, medicine and bio-chemistry;

c) Uses of electronics which may affect the rights of the person and the limits which should be placed on such uses in a democratic society; and

(d) More generally, the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity. (UNGA Resolution 2450 (XXIII) of 19 December 1968)

Components of the above U.N. Resolution could be incorporated in the Sri Lankan bill on protecting human Rights in Scientific Research. For example, obtaining “informed consent” by when human beings are research objects, to ensure protecting right to privacy in all the instances and adhere into the limits set forth in the Fundamental Rights Chapter of 1978 Constitution on Freedom of Expression.

On the other hand, in a context where right to life has not yet been guaranteed by the 1978 Constitution of Sri Lanka, when human beings are becoming research objects, there should be a very special mechanism to protect their rights. Further, as indicated in the introductory part, Sri Lankan Constitution has not recognized economic, social or cultural rights as fundamental rights.

Secondly, certain components of the outcome of Tehran Conference are also applicable in Sri Lankan context. “...such developments may nevertheless endanger the rights and freedoms of individuals and will require continuing attention.” (Teheran Proclamation, 1968). It is compulsory to pay continuous scrutiny over scientific research to ensure that human rights have been protected and is essential to overcome a potential threats to life, liberty and freedom of citizens as well as the to ensure democracy of the country. Therefore, it should be incorporated provisions to guaranty above requirements in order to anticipate possible violations. In light of the aforesaid facts, it is indeed necessary to focus on introducing such rights in the fundamental rights chapter of the 1978 Constitution.

Thirdly, the implementation mechanisms should be recognized. Especially, the features of human rights

relating to the scientific research area practices by strong regional human rights mechanisms such as European Human Rights System could be identified.

Mainly, there are three legal instruments in the European System in protecting human rights the bio-medical research. Namely, the European Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (ETS No. 164, entered into force Dec. 1, 1999), Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine on the Prohibition of Cloning Human Beings, (ETS No. 168, opened for signature on Jan. 12, 1998, not in force) and the Additional Protocol to the Convention on Human Rights and Biomedicine, on Transplantation of Organs and Tissues of Human Origin, (ETS No. 186, opened for signature on January 24, 2002, not in force).

Three of the aforesaid legal instruments include important features of the subject matter and the continuous process of carrying out of scientific research in the jurisdiction of the European System of Human Rights could be the reason for the above development where as once Roscoe Pound indicated as “law should reflect the society.” The pertinent areas to be considered for the domestic legal regime are listed below.

Mainly, the European Convention For the Protection of Human Rights and Dignity of the Human Being with Regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (ETS No. 164), (entered into force Dec. 1, 1999.) has been covering many areas which could be adapted in to a local system. Especially, it focuses on the areas such as consent (Chapter 2), Scientific research and Protection of Persons undergoing research (Chapter 5), organs and tissue removal of living donors for transplant Purposes (Chapter 6), Protection of Persons who have mental disorder (Chapter 7) Embryos in-vitro (Art. 18), Non-selection of future child’s sex in medically assisted procreation (Article 14) and finally, Steering Committee on bio-ethics as the implementation/supervisory mechanism for the treaty. The above features have been elaborated in extensive manner in order to protect human rights in scientific research in the region.

Subsequently, the Additional Protocols, respectively on the Transplantation of Organs and Tissues of Human Origin, 2002 and Prohibition of Cloning Human Beings, 1998 also incorporates advanced protection on human rights in matters of cloning human beings and tissue transplantation, areas; those of which could be possible

threats to Sri Lanka in coming generations. Therefore, it should also be incorporated in a Sri Lankan bill.

V. CONCLUSION

Relationship between Scientific research and human rights law is like a double-edged sword. Therefore, individually countries have to take measures to incorporate relevant measures in the domestic legal system to protect human rights. Sri Lanka is a developing country and could be expected to have advancements in the field of scientific research in near future. If there is no proper human rights standard recognized by the Sri Lankan domestic legal, there will be repercussions in near future as discussed above.

Introducing a legislative enactment on scientific research and human rights will be a turning point in Sri Lankan law related to scientific research and technological advancements. The aforesaid framework could be in a form of legislative enactment or of a part in a fundamental rights chapter of the Constitution. Further, it will enhance and encourage the scientific research in Sri Lanka for the betterment of human beings while leading the country for rapid development through scientific research.

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