

A CRITICAL STUDY ON THE PESTICIDE CONTROLLING LEGAL REGIME IN SRI LANKA

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ABSTRACT

All chemical pesticides are imported either as ready-to-use products or technical grade material for local formulation. Although key activities from import to end-user should be regulated by laws, only a few main activities are regulated by a special legal regime in Sri Lanka. Hence, doubts have arisen that the inadequacy of the laws may have created a fertile environment for market forces to exploit the gaps in the laws to sell unregulated harmful pesticides to farming communities, especially those who are affected by chronic kidney disease of unknown causes. Therefore, a dire need exists to analyse the existing pesticide-controlling legal regime in Sri Lanka. The main objective of this article is to analyse selected aspects of the existing pesticide control legal regime in Sri Lanka. The main research problem investigated is whether the existing pesticide control legal regime in Sri Lanka adequately regulates pesticide use. This research falls within the area of doctrinal legal research. The significant finding is that the absence of a coordinated approach among multiple state entities in making pesticide-controlling laws tends to create gaps which are used by the market forces to jeopardize end-users' health. Therefore, it is recommended for a complete revision of the existing legal regime which in turn may have a positive impact on the improvement of the health conditions of the people.

Keywords: pesticides control, health, Sri Lanka, regulatory overlapping

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1. INTRODUCTION

Mankind struggled with pest problems long before the commencement of organised farming and has used various traditional methods for pest control.¹ Generally, pesticides are substances used for destroying insects or other organisms harmful to plants, animals, and foods.² Chemical pesticides were first introduced in 1939 with the discovery of insecticide called dichlorodiphenyltrichloroethane (DDT). Since then, five major groups of chemical pesticides have been developed for pest control, i.e. Organochloride, Organophosphate, Carbamates, Pyrethroids, and Neonicotinoids. Even though all pesticides are toxic, considering the cost, benefit, and the health risk, pesticide use has been legalised around the world. Rachel Carson exposed the evil side of indiscriminate use of pesticides in her book 'Silent Spring' in 1962.³ Scientific experiments conducted in multiple disciplines have confirmed that pesticides can cause death, chemical burns, cancer, congenital malformations, dermatitis, sterility, weakening of immune system, neurological toxicity, and endocrine disruption.⁴ A leading international publication provides a vivid description of how law would contribute to poisoning human society through pesticides on one hand, and how law could find a solution to this man-made calamity on the other.⁵

The indiscriminate use of unregulated or poorly regulated pesticide and other developmental toxicants are considered to be one of the major causes of multiple non-communicable diseases, such as birth defects,

¹ J R M Thacker,., *An Introduction to Arthropod Pest Control* (Cambridge University Press 2002).

² World Health Organization 'Pesticide Residues in Food' <<https://www.who.int/news-room/fact-sheets/detail/pesticide-residues-in-food>>. accessed on 19 February 2018

³ R Carson. *Silent Spring* (Mariner Books, Houghton Mifflin 2002).

⁴ A D Jane 'Regulation of Pesticides in Developing Countries.' (2001) 32 Environmental Law Review 1045.

⁵ C F Cranor, *Legally Poisoned How the Law Puts Us at Risk from Toxicants* (Cambridge, Harvard University Press 2013).

cardiovascular disease, diabetes, lowered IQ levels in children, carcinomatous tumors, Parkinson's disease, dementia etc.⁶ Similarly, it is evident that indiscriminate use of poorly regulated pesticides is one of the major causes behind the much-debated public health issue relating to the Chronic Kidney Disease of unknown etiology (CKDu) in Sri Lanka.⁷ All chemical pesticides are imported from overseas either as ready-to-use products or as technical grade material for local formulation in Sri Lanka. The importation, distribution, sale, use, and other key activities of pesticides are governed by specific laws. The studies on the effectiveness of laws controlling pesticides in Sri Lanka are scanty.⁸ Therefore, this study aims to address this gap.

2. OBJECTIVE AND RESEARCH PROBLEM

The primary objective of this paper is to analyse the existing legal regime controlling pesticides in Sri Lanka and identify its weaknesses. The key research problem that was investigated is whether the existing pesticide control legal regime in Sri Lanka adequately regulates pesticide use ensuring public health. Accordingly, selected key aspects of the registration and licensing process of pesticides were analyzed for this purpose.

⁶ Ibid.

⁷ M A C S Jayasumana, *Vakugadu Satana* (1st edn., Sarasavi Publishers 2016), 37; M A C S Jayasumana, and others, 'Possible Links of Chronic Arsenic Toxicity with Chronic Kidney Disease of Unknown Etiology in Sri Lanka' (2013) 3 *Journal of Natural Science Research*, <<https://www.iiste.org/Journals/index.php/JNSR/article/view/4193/4246>> accessed 15 November 2023.

⁸ M Ponnambalam, 'Occupational Exposure to Pesticides in Sri Lanka' (1983) 8 *Economic Review* 17 <<https://dl.nsf.gov.lk/handle/1/14763?show=full>> accessed 4 April 2018.

3. METHODOLOGY

For this research paper, a literature review-based methodology was adopted. Accordingly, relevant primary and secondary legislative sources were analysed. The official reports, views of researchers and writers, and scholarly journal articles were perused as secondary sources.

4. TRACING THE DEVELOPMENT OF PESTICIDES LAWS IN SRI LANKA

The development of laws controlling pesticides in Sri Lanka occurred through a slow but gradual process.⁹ There are several milestones. First, Sri Lanka recognized that plants should be protected from pests and weeds as early as in 1924. Plant Protection Act, No.10 of 1924 (PPA) established a directorate to legalize the spraying, cleansing, and fumigation of plants. Second, it was adopted a liberal policy on importing pesticides before 1962. However, the country imposed import restrictions up to Rs. 5.23 million due to dwindling foreign reserves in 1962. Subsequently, due to stiff objections from the pesticide companies a committee was appointed to review the existing pesticide law. Third, a 'Draft Act on Agricultural Pesticides' was submitted to the Attorney General's Department in 1964 but it did not become the governing law. Fourth, the importation of pesticides increased dramatically due to the liberal economic policy of 1977. It prompted the lawmakers to introduce new laws for controlling the pesticide trade. Fifth, in this context, a new draft was prepared with the assistance of the Food and Agriculture

⁹ J Sumith, 'An Overview of Pesticide Regulation in Sri Lanka' <https://medicine.kln.ac.lk/depts/publichealth/Fixed_Learning/HEB/Media%20Seminar%20Presentation/Safe%20Use%20Of%20pesticide/pesticide_regulation.pdf> accessed 8 August 2021.

Organization (FAO). Later it was passed as 'Control of Pesticides Act, No. 33 of 1980' (CPA) and fully implemented from 1984.¹⁰

4.1. Directive Principles of the Constitution and their Impact on Pesticides Laws

Article 27(1) in the Constitution provides that the directive principles embodied in Chapter VI should be considered as guidance to Parliament, the President, and the Cabinet of Ministers in the enactment of laws and governance. Accordingly, some directive principles have direct relevance to pesticide laws. For example, Article 27(14) provides that the State is bound to protect, preserve, and improve the environment for the benefit of the community. Also, Article 28(f) casts fundamental duties of every person to protect nature and conserve its riches. Since the excessive and indiscriminate use of pesticides causes irretrievable harm not only to the physical environment but also to all living beings, the above-mentioned constitutional provisions provide -guidance to lawmakers in the enactment of pesticide laws, there is a trend at present that the 'fundamental duties' of citizens are often cited by petitioners in public interest litigations to justify their *locus standi* to file environmental cases.

However, Article 29 expressly states that those directive principles in the Constitution do not confer or impose any legal rights or obligations and therefore they are not enforceable. Nevertheless, the environmental jurisprudence developed by the apex courts in exercising their interpretational jurisdiction has tied up those directive principles to the 'public trust doctrine'¹¹ and thereby conferred judicial enforceability and

¹⁰ Nalini De Alwis, 'Pesticide Legislation in Sri Lanka' <http://dl.nsf.gov.lk/bitstream/handle/1/5742/VIDU%2011_1_13.pdf?sequence=1&isAllowed=y> accessed on 26 November 2023.

¹¹ The early applicability of 'public trust' doctrine in Sri Lanka can be traced to the Arhat Mahinda Thero's advice to King Devanampiyatissa. Further, the judiciary as recognized this principle in a series of judgments such as *De Silva v. Atukorala* (1993) 1 Sri L.R

justiciability to them. For example, in the celebrated case of *Bulankulama and Others v Secretary, Ministry of Industrial Development and Others* (popularly known as *Eppawela Case*)¹² it was held *inter alia* that there is an imminent danger of infringement of the fundamental rights of the villagers (petitioners) guaranteed in Articles 12(I), 14(1)(8) and 14(1)(h) of the Constitution due to the proposed phosphate extraction.¹³

In this judgment, referring to the directive principles in the Constitution the court upheld that:

[T]he Constitution today recognizes duties both on the part of Parliament and the President and the Cabinet of Ministers as well as duties on the part of 'persons', including juristic persons like the 5th and 7th respondents. Article 27(14) states that 'The State shall protect, preserve and improve the environment for the benefit of the community.' Article 28(f) states that the exercise and enjoyment of rights and freedoms (such as the 5th and 7th respondents claimed in learned counsel's submissions on their behalf to protection under Article 12 of the Constitution relating to equal protection of the law)' is inseparable from the performance of duties and obligations, and accordingly every citizen in Sri Lanka protect nature and conserve its riches.¹⁴

283., *Bandara v. Premechandra* (1994) 1 Sri L.R 301, *Environmental Foundation Ltd v. Urban development Authority* SC FR Application No 47 – 2004.

¹² *Bulankulama and Others vs Secretary, Ministry of Industrial Development and Others* (2000) 3 Sri LR 243.

¹³ The *ratio decidendi* of the *Bulankulama* case was followed by subsequent cases such as *Watte Gedera Wijebanda v. Conservator General of Forests and Others*, (2009) 1 SRI LR 337, *Environmental Foundation Ltd. And Others v. Mahawali Authority of Sri Lanka and Others*, (2010)1 Sri LR 1.

¹⁴ *Ibid* p.257.

4.2 Existing Legal Regime on Pesticide Control

The existing legal regime on pesticide control consists of two types of legal sources i.e. principle legal sources (PLS) and secondary legal sources (SLS). However, it will be observed in the succeeding discussion that despite a constitutional duty placed on the lawmakers to toe in line with the directive principles in enacting laws, the legal principles and norms enshrined in the pesticide control enactments hardly fall in line with the directive principles of the Constitution. The Figure 1 demonstrates the current pesticide legal regime in Sri Lanka.

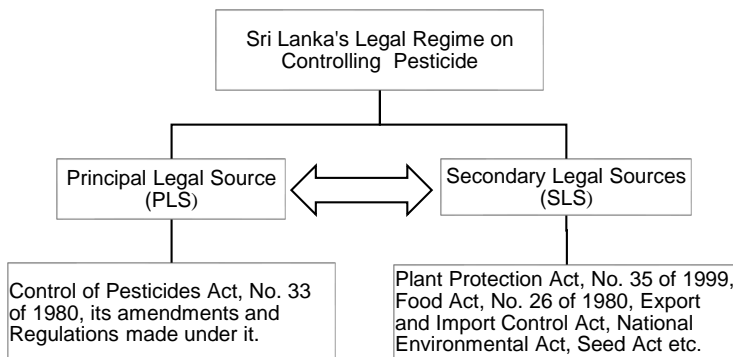


Figure 1 : Pesticide Controlling Legal Regime

Figure 1 shows PLS which is the major legislation that exclusively deals with pesticide control. It provides the main Regulatory Legal Framework (RLF). PLS consists of (a) the Control of Pesticide Act (CPA), (b) Amendments brought to CPA in 1994 and 2011, and (c) Regulations made under CPA and published in the Gazette.

SLS in general consists of laws that deal with the environment, seed protection, consumer affairs, pesticide research, agrarian services, import-export, etc. However, it contains particular legal provisions relevant to pesticide control. Table 1 below list out key SLS enactments.

Table 1: Secondary Legal Sources on Pesticide Control

S/N	Name of the Enactment	Provisions Relevant to Pesticide Control	Observations
1	National Environmental Act, No. 47 of 1980	Section 7- National Environment Council- This is the apex policy making body under NEA. Similar bodies exist under Seed Act and CPA.	There are no linking provisions in SA, CPA and NEA as regards the composition of apex bodies under these three legislations.
2	Seed Act, No. 22 of 2003	Section 22- definition of 'pest'	Seed Act definition on 'pest' is vastly different from CPA definition given in Section 27.
3	Plant Protection Act, No. 10 of 1924 and No 35 of 1999	Section 15-definition of 'pest'	This Act adopts the definition given in Seed Act. It is different from CPA definition.
4	Consumer Affairs Authority Act, No. 9 of 2003	Section 10 (10)- for the protection of consumers, the Authority has powers to issue general directions to manufacturers or traders regarding labeling, price marking, packaging, sale or	CPA under its regulation has issued direction on packaging, labeling etc., but no linking provisions to CAA regulations

		manufacture of any goods.	
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Both primary and secondary legal sources can be further divided into pre-market and post-market control laws. In this study, due to space limitation, the main attention is focused on the PLS.

4.3. Principal Legal Source-Principal Legislation

CPA is the main legislation in the PLS and it consists of 27 sections. The department of Agriculture (DOA) is the state agency responsible for the enforcement of CPA and the Registrar of Pesticides (ROP) is the licensing authority under the Act. All purpose-pesticide products, such as those used in agriculture, public health, domestic, industrial veterinary, etc., fall under the regulatory mechanism of ROP.¹⁵ Table 2 below summarizes the operative sections of CPA and some critical observations.

Table 2: Summary of the Operative Provisions of CPA and some Critical Observation

S/N	Section No	Matters Dealing With	Observations
01	Sections 2-5	Application of the Act, appointment of ROP, Pesticides Technical Advisory Committee (PeTAC).	This Act does not recognize local manufacturing of pesticides or promotion of traditional pest control methods. It focuses on importing of pesticides only. This one-sided market-policy stance of the

¹⁵ Department of Agriculture, 'ROP – Home – Department of Agriculture Sri Lanka' <<https://doa.gov.lk/rop-home-3/>> accessed 25 November 2023.

02	Sections 6-13	Application to obtain license to import, package and reformulation of pesticides, issuance and cancellation of license, appeals against rejection or cancellation.	legislature is unacceptable. It has not only discouraged the potential local manufactures but also consumed a large amount of hard-earned foreign reserve for importation. According to the 2021 Performance Report of ROP, 6400 Mt of technical grade pesticides and formulations have been imported to Sri Lanka at a cost of more than USD\$ 50, 909 M. ¹⁶
03	Sections 14-20	Mandatory prohibitions on some key activities, i.e. manufacture, formulation, packaging, distribution, selling, adulteration, storage, advertising, time interval between application of pesticide and harvesting etc.	Regulations exist relating to some of those key activities, but they need drastic revision and new regulations and rules need to be introduced. For example, health and safety of employees ¹⁷ involved in those activities, selling of pesticides with approved sale certificate etc. For example, Pesticide Regulations (Sales and Supply), No. 1 of 1999 provides that no person should sell or offer to sell any restricted or general pesticide unless he is registered with the Registrar as an Agrochemical Sales and Technical Assistant. Also, ROP is obliged to give training to them. As per ROP's Performance Report

¹⁶ Registrar of Pesticides, 'Performance Report 2021' (2022) <<https://doa.gov.lk/rop-downloads/#1635744215554-f85cddad-7757>> accessed 7 January 2024.

¹⁷ ROP's Circular PPE/Saf/04/2016- Stewardship Initiatives and Mandatory Requirements for Personal Protective Equipment in Sri Lanka.

			2021, training has been conducted in 06 districts only in 2021.
04	Sections 21-22	Appointment of agricultural officers designated as 'authorized officers'	Refer to point 5 of Table 3
05	Section 23	Fees for registration and licensing	ROP charges fee on nine activities such as registration, re-registration, pesticide sales certification, pest control service licensing, renewals, import license, company registration, filing fees, agrochemical sales and technical assistant application. ¹⁸
06	Sections 24-25	Criminal liability for contravention of CPA, penalty and forfeiture of any article belonging to offenders as punishment.	This aspect needs to be critically revisited to ensure the proper implementation of the law- Refer point 6 of table 2 below
07	Sections 26-27	Powers of minister to make regulations and interpretations of some key words and phrases	New regulations concerning compensation for victims of illegal pesticide sale and use and establishment of a fund for that purpose are some of the vital areas that need immediate attention, especially in the context of health issues arising from indiscriminate use of pesticides. Therefore,

¹⁸ Registrar of Pesticides (n 16).

		ministerial powers for approving such finical relief needs to be introduced into the principal legislation.
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Subsequently, the legislature introduced two amendments to CPA in 1994 and 2011. Some significant changes that were introduced via those amendments are summarized in Table 03 below.

Table 3: Changes Introduced by the Amendment Acts to CPA and Summery of Observations.

S/ N	Changes Introduced by the 1994 and 2011 Amendments	Observations
01	Broadening the scope of CPA by including <i>adjuvants</i> to the definition of active ingredients.	Although the newly introduced changes have addressed some observations in Table 1 above, still more to be done.
02	Introduced a new schedule excluding certain non-toxic materials and <i>adjuvants from CPA, i.e.</i> naphthalene, paradichoroherine, pet care shampoo, non-toxic glues for pest control devices.	Given below are only a summary of few key observations. For example; (i) Recognition of traditional pest control methods, (ii) local manufacturing of pesticides,
03	PFC was replaced with PeTAC. Its membership was increased from 10 to 15 and given wide powers.	(iii) Compensation mechanism for the victims of pesticide use,
04	Compulsory registration of pesticide control service providers (PeCSP) and obtaining of certificate of sale (CfS) for trading pesticides.	(iv) Pre-market control strategies etc. need to be introduced to the local legislation. In the case of market testing, post- market testing is favored over pre-market testing due to multiple factors such as availability

05	Appointment of assistant ROPs and widening the definition of authorized officers by including such as food inspectors, public health inspectors, <i>Grama Niladhari</i> or village headman, inspector of labor or any public officer authorized by ROP.	of well-equipped laboratories and funding etc. In 2021, 974 import approvals have been granted by ROP to import pesticides checking only by prior verification of product origin. But only 152 samples have been tested via the central analytical laboratory Gannoruwa, and outsourced laboratories. ¹⁹ .
06	Definition of 'authorized analyst' broadened by including all grades of analysts in the Government Analyst Department i.e. additional government analysts, deputy government analyst, senior assistant government analysts, assistant government analyst, and chemist of central Agricultural Research Institute, etc.	(v) Removal of provisions from the principal and other related enactments of the clause which says "this law prevails over other laws" and to introduce a more rational linking provisions in the PLS and SLS relating to pesticides control legal regime.
07	Enhancement of punishments by a fine not less than one hundred thousand rupees and not exceeding five hundred thousand rupees or two years simple or rigorous imprisonment or both.	(vi) Introduction of a comprehensive Codification of all laws concerning pesticide life cycle

4.4. Key Activities Controlled by the CPA Regulatory Mechanism

In any legislation, a long title is considered an important parameter to understand the objective and intention of the legislature in passing the law.²⁰ According to the long title of CPA, a number of actions involved in the pesticide industry are subjected to the legislative regulatory

¹⁹ Ibid

²⁰ Maxwell P B and P St J Langan, *Maxwell on the Interpretation of Statutes* (Tripathi 1993).

mechanism. Table 4 provides a glimpse of key activities controlled by the CPA.

Table 4: Key Activities Controlled by Legislative Intervention

S/N	Activities Regulated by CPA	Observations
01	Registration and licensing of pesticides	It is only 08 activities (i.e. from No.04 - 11) which are actually regulated by CPA. However, what is required is to address all stages of pesticides life cycle by the main legislation, i. e. market surveillance, environmental hazards, disposal of pesticide containers, training and education on handling of pesticides etc. ²¹
02	Appointment of licensing authority	
03	Setting up pesticides technical advisory committee (PeTAC)	
04	Importation	
05	Packing	
06	Labeling	
07	Storing	
08	Formulation	
09	Transportation	
10	Sale	
11	Use	
12	Matters connected or incidental	

5. REGISTRATION PROCESS

The registration process consists of three stages i.e. Pre-registration, Registration, and Renewal of registration. The striking feature of this registration process is that, at each stage, an application can be rejected if it does not satisfy the relevant criteria or tests. It will discourage the potential abusers of the system while encouraging genuine applicants to

²¹ Food and Agriculture Organization of the United Nations, 'International Code of Conduct on Pesticide Management Guidance on Pesticide Legislation (Second Edition, 2020) <<https://www.fao.org/3/cb0916en/cb0916en.pdf>> accessed 25 November 2023.

review their applications and supporting documentary evidence constantly. In the pre-registration and renewal stages, an applicant desirous of licensing any pesticide is required to apply in the prescribed form giving certain details. Figure 2 summarises the key stages in the registration process.

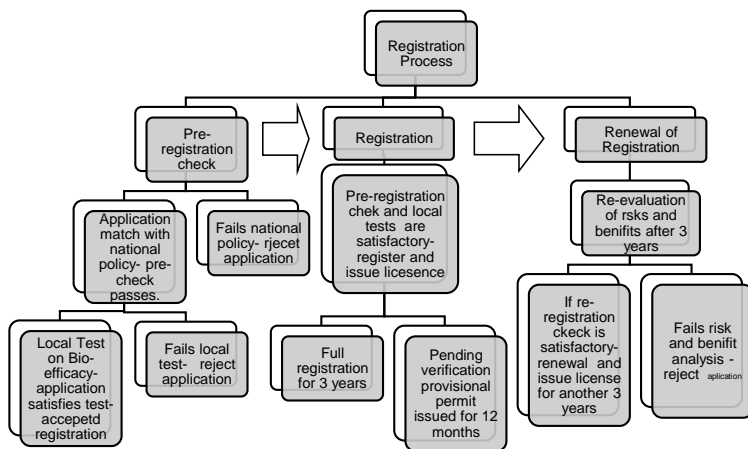


Figure 2- Pesticides Registration Process

6. LICENSING OF PESTICIDES

The main regulatory tool under CPA is compulsory licensing. Under CPA, ROP issues four types of licenses or permits.²² They are (a) Full license (for 3 years)²³, (b) Provisional permit (for 12 months) for limited marketing pending issuance of license or instead of license²⁴, (c) Certificate for sale or offer to sale.²⁵ This certificate does not apply for domestic pesticides.

²² CPA 1980 s7 and 8.

²³ CPA 1994 Amendment, Sub-section (a) of s 8.

²⁴ CPA 1994 Amendment, Sub-section (b) of s 8.

²⁵ CPA 1994 Amendment, s 21A.

(d) Pesticide Control Service Provider License (PeCSPL) for five years.²⁶ Accordingly, ROP is empowered to issue a full license for pesticides under three broad categories. They are Restricted Pesticide (RP)²⁷ Domestic Pesticide (DP)²⁸ and General Pesticide (GP).²⁹

7. ANALYSIS

7.1. Definitional Ambiguity

The definition referred in the Section 6 above create further issues. For example, according to the definition relating to RP, it is evident that all pesticides qualify to be classified as RP as they have some adverse effects on human health and environment.³⁰ Therefore, if those classifications are based on generally accepted toxicity levels, as per the Acute Toxicity Hazard Categories from the Globally Harmonized System (GHS), it would have been more plausible.

7.2. Procedure for Granting Provisional Permits

The procedure for granting the provisional permits is not described. There are no clear guidelines both in CPA, its amendment, and the relevant regulations under what ground(s) such permit may be issued. It is clear that ROP has been given wide administrative discretion in this regard. As a result, the following issues may arise.

²⁶ Regulations issued under s 26 of CPA.

²⁷ RP is defined as any pesticide formulation, which may have adverse effects on human health, specific non-target organisms, and on the environment.

²⁸ DP is defined as a pesticide with low toxicity levels in active ingredients and is unlikely to be hazardous in normal use.

²⁹ s 27 (as amended in 1994).

³⁰ J Sumith, 'An Overview of Pesticide Regulation in Sri Lanka'

<https://medicine.kln.ac.lk/depts/publichealth/Fixed_Learning/HEB/Media%20Seminar%20Presentation/Safe%20Use%20Of%20pesticide/pesticide_regulation.pdf> accessed 8 August 2021.

- On what grounds such provisional permits are issued to pesticide traders?
- Does the 'limitation of marketing' mean limiting the quantity of sales, limiting the number of customers (users) or limiting the geographical areas of sale?³¹

No satisfactory answers to the above questions can be found in the legislation. This omission in the CPA would lead interested parties to import harmful pesticides into the country.

7.3. Absence of Legislative Compulsion on Pre-market Test

Pre-market test is not pre-requisite on the licensing authority under governing law. This is an important preventive measure to ensure the quality and efficacy of chemical pesticide. Hence, it prevents high-toxicity pesticides in the market. The recent public notice issued by ROP has admitted that certain illegal pesticides have entered into the local market.³² Although pre-market testing is costly, the continuous cumulative cost that may be incurred from toxic pesticide-related human and environmental damage may be higher than the initial cost. Further, the CPA does not regulate impurities and surfactants as they do not come under the CPA regulatory framework. As a result, any pesticide with heavy metals and toxic chemicals gets through the registration process and enters the market.³³ In the same manner, monitoring of pesticide formulation factories, storage facilities, detection of unauthorised activities, monitoring of pesticide use, etc. are not regulated effectively. The cumulative result

³¹ ROP's Circular No. RP/PCS/021202 1 Maintenance of Stock Records & Details of Marketing on All Restricted Pesticides- This circular applies to Restricted Pesticides only.

³² Public Notice issued by

ROP, <https://drive.google.com/file/d/1KZCMft5yyVtpB7NBTR0J0GX3mWMMDRPI/view> accessed 6 September 2019.

³³ ROP's Circular No. RP/2021/Biocides- make it compulsory to provide details of some of those chemicals.

of all these commissions and omissions is the entering of harmful pesticides freely into the local market and exposing the end-user, i.e. farmers and consumers, to unknown health hazards such as CKDu.

7.4. Absence of Promotion of Local Manufacturing and Traditional Pest Control Methods

Further, on a cursory glance at the long title of CPA, it is seen that lawmakers have focused attention on the regulation of "*imported*" pesticides only. This in a way which seems like indirectly promoting the importation of pesticides due to multiple grounds such as: regulatory function focuses on imported pesticides; potential local manufacturers get discouraged from initiating local manufacturing; local investors would not invest thinking that they would not get any tariff concessions and subsidies from the government for local pesticide industry.

Moreover, lawmakers have paid less attention to promoting traditional pest control methods. There are many traditional pest control methods.³⁴ The farming community through their intuitive knowledge and experience understands the efficacy and usefulness of the traditional methods. Traditional pesticides and pest control methods have been tested and used for many centuries. Further, research on traditional methods needs to be encouraged. The Parliamentary Consultative Committee on Agro-chemicals and Rapidly Spreading Kidney Disease has proposed to impose a 10 % health safety tax on all imported pesticide varieties and

³⁴ R Ulluwishewa, 'Indigenous Knowledge Systems for Sustainable Development: The Case of Pest Control by Traditional Paddy Farmers in Sri Lanka' (1992) 06 Vidyodaya Journal of Social Science 79. <<http://www.dr.lib.sjp.ac.lk/handle/123456789/681>> accessed 7 September 2019.

the amount of levy to be used for welfare of the kidney patients and research activities.³⁵ Thus, this proposal should be given due priority.

For the purpose of absorbing pest control methods, firstly, existing laws should recognize them giving legal validity. Studies reveal that harmful pesticides, which are banned in manufacturing countries, are exported to developing countries where knowledge of hazards level is non-existent or scanty.³⁶ In such situations, the promotion of eco-friendly and user-friendly traditional pesticide-control techniques is extremely useful for developing countries like Sri Lanka.

7.5. Conflict in Laws between PLS and SLS

Apart from the omissions in the existing primary legal source as pointed out in the above paragraphs there are contradictions and confusions in the secondary legal sources. Since SLS consists of several enactments, an attempt is made below to pinpoint some salient disparities in the CPA and selected SLS viz. Seed Act (SA), Plant Protection Act (PPA), and National Environmental Act (NEA).

Firstly, there is a vast difference in the definition of 'pest' given in CPA and SA. CPA Section 27 defines pest as:

An insect, rodent, bird, fish, mollusk, nematode, fungus, weed, micro-organism, virus, or another kind of plant or animal life which is injurious, troublesome, or undesirable to crops, stored products, processed foods, wood, clothes, fabric, or inanimate objects or which are objectionable from the viewpoint of public health, and hygiene, also includes ectoparasites of man and animals.

³⁵ Editor Sunday Times, 'Kidney Disease Spreads; Govt. To Ban Ads on Agro-Chemicals the Sundaytimes Sri Lanka' (*The Sunday Times*, 13 August 2013) <<https://www.sundaytimes.lk/130818/news/kidney-disease-spreads-govt-to-ban-ads-on-agro-chemicals-58562.html>> accessed 7 January 2024.

³⁶ See Jane (n 4).

However, Section 22 of Seed Act, No. 22 of 2003 defines pest as 'any biotic agent capable of causing injury or damage or economic loss to plant or plant products and shall include weed seed'. Moreover, Section 15 of Plant Protection Act No 35 of 1999 also defines 'pest' as in SA. The above provisions highlight that there is no comprehensive and consistent definition of the meaning of pest in the primary and secondary legal sources in Sri Lanka. Therefore, it is appropriate to suggest revisiting the definition provided in PLS and SLS to accommodate modern definitions with consistency. For an example, the United States Code of Federal Regulations (CFR), a pesticide is any component or mixture of compounds intended for use as a plant regulator, defoliant, or desiccant.³⁷ Adopting one common and simple definition for Sri Lanka would be one of the progressive steps among other measures.

Secondly, a major weakness in the existing legal regime is that there is no proper connectivity between PLS and SLS. As a result, pesticide users of all sorts may be confused in getting approvals for their activities. For example, CPA empowers PeTAC with a wide range of advisory functions. PeTAC is the most authoritative national consultative and advisory body on pests and pesticide control. PeTAC has the power to advise ROP on registration, approval of containers, storage, formulation, import, sale, and use of pesticides. SA also contains a general policy context on pest control in seeds. The main purpose of this law is to regulate the quality of seed and planting materials. For that, it establishes a Seed Council. Its main functions include to establish appropriate minimum limits for germination viability, genetic purity for genetic impurities, water content, and pests allowed in seeds available in the market.

³⁷ V T Pthak et al, 'Current Status of Pesticide Effects on Environment, Human Health and It's Eco-Friendly Management as Bioremediation: A Comprehensive Review' 13 (2022) *Frontiers in Microbiology* 1
<<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9428564/>> accessed 7 January 2024.

For this, the Seed Council should seek guidance from PeTAC because it is the principal governmental body in pest and pesticide control. However, PeTAC is not a member of the Seed Council and *vice versa*. Therefore, perhaps advice given by the Seed Council on seed-related pest control may not be compatible with the overall guidelines of PeTAC on pest and pesticide control and *vice versa*. Further, under the NEA, a similar decision-making body has been established namely, the National Environmental Council (NEC). NEC has wide powers to recommend national environmental policies and criteria for the protection of the environment. The NEC has 22 members drawn from various government departments and agencies, which had direct or indirect roles in the protection of the environment. Here again, as in Seed Council, ROP is not a member.

In this context, regulations, and guidelines prepared by these three bodies regarding pest and pesticide control, and environmental protection may not be consistent and therefore may become confusing. For example, regulations published at GOSL Extraordinary Gazette No 1533/16 by the minister of environment state that all factories engaged in the formulation, re-mixing, and manufacturing of pesticides, insecticides, fungicides, and herbicide must obtain a license for that purpose.

Now the question is 'does this mean that a formulator who has already obtained a license under CPA for a particular pesticide, should obtain another license from the National Environmental Authority (NEA)?'. This situation is made worse by the provisions in section 29 of the NEA. It states:

The provisions of this Act shall have an effect notwithstanding anything to the contrary in the provisions of any other written law and accordingly, in the event of any conflict or inconsistency between the provisions of this Act and the provisions of such other

written law, the provisions of this Act shall prevail over the provisions of such other written law.

According to the above provision, any pesticide formulator who has not obtained a license under NEA cannot argue saying that it is not necessary because he has already obtained a license under CPA. When there is an inconsistency in any written law and NEA, NEA must prevail. This means such a formulator must obtain another license from NEA and if not, he is liable to be punished for violation of NEA Act. Additionally, a similar provision can be found in the Factories Ordinance. This law is provided for the registration of factories. It provides that if any conflict arises between 'this law' i.e. Factories Ordinance and any other written law, this law should prevail (Factories Ordinance No 45 of 1942). It is seen, therefore, that this contradiction and mismatch in law has created confusion as to the proper law governing those matters. Unscrupulous pesticide dealers and venders may capitalize those weaknesses for their benefit. There are similar mismatches between CPA and other enactments mentioned in SLS above.

7.6. Absence of mechanism for paying compensation to the victims of unauthorised pesticide use

It is of common knowledge that unauthorised pesticides are available in the global and local markets.³⁸ Farming community and general public purchase those pesticides for farming and domestic purposes. The ongoing debate in Sri Lanka and elsewhere as to the cause of CKDu suggests that multiple exposure to pesticides may be a possible cause of

³⁸ See Ulluwishewa (n 34).

CKDu.³⁹ A large number⁴⁰ of CKDu patients are living in Sri Lanka under trying circumstances with a meager financial and other type of relief currently received from certain governmental and non-governmental agencies.

8. CONCLUSION AND RECOMMENDATIONS

In conclusion, it should be emphasized that although the main Regulatory Legal Framework is provided in Control of Pesticide Act, no corresponding provisions between primary and secondary legal sources. This omission may lead the government bodies to deviate from their official responsibility and attribute fault to others. The main cause for the absence of coordination among different government bodies dealing with pests and pesticides is due to the hasty and piecemeal manner of legislation. Therefore, a complete overhaul of PLS and SLS is a must to enhance the effectiveness of the existing legal regime. In that process, attention should be focused on introducing new legal provisions in the CPA making pre-market testing compulsory; monitoring of factories manufacturing; and formulating pesticides. The Factories Ordinance should be amended creating specific obligations on the owners regarding workers' safety in dealing with toxic substances including pesticides.

Further, new laws and regulations should be introduced or updated to the existing regulations and rules about the transport, distribution, handling, and storing of pesticides. In addition, the pesticide selling process should

³⁹ Channa , G Sarath and Priyantha, 'Glyphosate, Hard Water and Nephrotoxic Metals: Are They the Culprits behind the Epidemic of Chronic Kidney Disease of Unknown Etiology in Sri Lanka' (2014) Int.J.Environ.Res.Public Health 2125.

https://www.researchgate.net/publication/260375117_Glyphosate_Hard_Water_and_Nephrotoxic_Metals_Are_They_the_Culprits_Behind_the_Epidemic_of_Chronic_Kidney_Disease_of_Unknown_Etiology_in_Sri_Lanka accessed 6 January 2024.

⁴⁰ C Rohana and others, 'Chronic Kidney Diseases of Uncertain Etiology (CKDu) in Sri Lanka: Geographic Distribution and Environmental Implications' (2010) 33 Environmental Geochemistry and Health 267.

be strictly regulated. Current provisions for requiring certificates for sale and registration of pesticide service providers would be meaningful only if this is done. For that, farmer identification, need verification, and prescription of pesticides should be made compulsory through legal provisions in the CPA itself rather than through regulations or administrative circulars.

It is necessary to review CPA to include mandatory provisions for researching and promotion of traditional pest control methods and establishment of National Research Fund for that purpose. Further, introducing mandatory provisions in the CPA would be beneficial to grant compensation to victims affected by pesticide. Currently, there is only criminal liability for the offenders who violate the law. Punishing offenders would deter future violators but would not relieve victims of their agony and economic hardships. Therefore, a comprehensive compensatory mechanism should be introduced in the CPA whereby the pesticide importers could be made liable to pay compensation. Therefore, in this context, it is suggested to apply a similar policy used in the environmental jurisprudence such as 'polluter pays principle' in the pesticide legal regime. In summing up, it is reiterated that the pesticides controlling legal regime in Sri Lanka needs drastic overhauling in the interests of the farming community in particular and the public in general.