Abstract - Using different kinds of chemicals for agriculturally produced foods is a common phenomenon in Sri Lanka. The use of chemicals can be seen mostly in each and every step in the cultivation process, from nursery level till it reaches customers. Particularly this can be mostly seen in fruit ripening process. Fruit ripening is a natural process and it takes some time for fruit to ripen naturally. However, it is very pathetic to note that farmers, sellers and distributors use chemicals to get a high profit in their businesses even in off seasons and to deal with transportation and distribution issues. In appearance, the chemical treated foods are very attractive, greener and more fresh looking than untreated food; however, now this has created many challenging issues such as health, environmental, social, economic and has now become even a threat to the right to life of people in Sri Lanka. This research is basically a normative study, which focuses on the legal aspects of using chemicals for agriculturally produced foods. By adopting the rights based approach this study focuses on the State’s responsibility to a human rights regime regarding food safety. This study describes the available international human rights provisions and domestic legal provisions in this regard. The main objective of this study is to critically analyze whether the existing law regarding chemical treated food is adequate to address the current needs of society with the standards prescribed by the international community.

Keywords: Food Safety, Right to health, Right to life

I.INTRODUCTION

Using chemicals in Sri Lanka has a long history and it is revealed that this was first used in the anti-malaria campaign. However in later stages, being aware that the use of chemicals may increase the profit level of farmers, they tended to use chemicals without considering the adverse situation which can result from using chemicals. Particularly this can be mostly seen in the fruit ripening process. Fruit ripening is a natural process and it takes some time for fruit to ripen naturally. However, it is very pathetic to note that farmers, sellers and distributors use chemicals for this process to get a high profit in their businesses even in off seasons and to deal with transportation and distribution issues.
In the current context, this situation has led to many challenges in Sri Lanka such as health, environmental, social, economic and finally now it has become a threat to the right to life of people of this country. As a health problem, Sri Lanka is now faced with a challenge of handling thousands of chronic kidney patients mainly in the North East provinces, where most of the people are engaged in farming as their livelihood. Chemical injection used by fruit sellers to ripen fruits can cause cancer among users. Further, calcium carbide which is used very commonly for fruit ripening is a carcinogenic chemical that contains traces of arsenic and phosphorous which are extremely hazardous to the human body. The hazards can have short term and long term effects on the human body. The symptoms of carbide poisoning include vomiting, irritation or burning sensation in the eyes and skin, skin ulcers, irritation in the mouth, nose and throat, among other effects. It can also cause mood disruption, memory loss and allergic reactions.

Spreading these chemicals into the environment has led to the pollution of water, soil and even air, creating problems not only to the generation living now, but also to the future generations. Particularly chemicals such as Cadmium have led to the pollution of water at mass level. The chemicals which are mixed in the soil start the pollution, and farmers themselves who used these chemicals have become the victims of several chronic diseases. Further this situation has created different economic and social problems. Especially it can be seen that most of the farmers who have chronic kidney disease belong to the low income level and are unable to meet their essential medical expenses. This has led to a situation where their children are compelled to terminate their education in order to find the income for their families.

II.OBJECTIVE OF THE STUDY
In this context, the main objective of this study is to critically analyze whether the existing law regarding this area is adequate to address the current needs of society with the standards prescribed by the international community.

II.THEORETICAL FRAME WORK
The main theory that runs through this study is the human right based approach; which is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights (UNICEF (2006)).
The elements of a human rights based approach have been well established for over a decade, following the adoption of the United Nations Common Understanding in 2003 that marked the beginning of a shift towards the further ‘operationalization’ of human rights. The goal of this approach is to enhance the right mentioned in the UDHR and final output is to increase the capacities of ‘duty-bearers’ to meet their obligations and of ‘rights-holders’ to claim their rights. The seven main key principles are availability, accessibility, acceptability and quality of quality and services, participation, equality and non-discrimination and accountability.

III. METHODOLOGY

This study is basically normative in nature. The author inquires about the laws governing the area of food safety globally and in Sri Lanka. The author has used UDHR, ICCPR, ICESCR and many other international instruments and Sri Lankan Legislations as primary sources and various books, journal articles, case laws, and web resources have been used as secondary data for this study.

IV. INTERNATIONAL HUMAN RIGHTS APPROACH TO THIS ISSUE

When analyzing this issue, the situation can be identified as one leading to a violation many rights, mainly including right to food. The right to food which is an inclusive right and it is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them. Improving nutrition is essentially a process of encouraging people to make healthful choices that improve their well-being.

Although there is an argument for the categorization of human rights as declared by Article 5 of the Vienna conventions, human rights are universal, interrelated, indivisible and interdependent. This acknowledgement is quite similarly applicable to the right to food, as violation of the right to food can lead to the violations of many other economic, social, cultural rights and as well as violation of some major civil and political rights, including Right to life. If people are not adequately fed with food and if foods are not nutritious and safe enough, it can lead to a situation where the right to life is threatened. Moreover, violation of the right to food can be the origin for the violation of the right to health, right to water, right to adequate housing, right to education, right to work and social security, freedom of association, right to take part in public affairs, right to information, freedom from the worst forms of child labor and freedom from torture, cruel, inhuman or degrading treatment. Furthermore, the Committee of the Economic Social and Cultural Rights(CESCR) affirms that adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of
other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of human rights for all. (General Comment Number 12).

In this context state parties are bound by International obligations to protect the human rights of individuals of a country and not taking effective and adequate actions against use of excessive chemicals in food production and processing can be considered as a violation of state obligations.

The right to food as a human right has been declared in many instances in human rights documents. As the core international human rights document, the Universal Declaration of Human Rights (UDHR) incorporated in 1948 after the establishment of the United Nation in 1945, recognizes the right to food in Article 25 in the context of an adequate standard of living stating that: “Everyone has the right to a standard of living adequate for the health and well-being of his family, including food,……

The International Covenant on Economic Social and Cultural Rights (ICESCR) is fully committed to the protection and promotion of Economic Social and cultural rights in global and local contexts. It stipulated 31 main articles and among these articles, article 11 has specifically contributed to the recognition of the right to food, including food safety as follows.

*Article 11 of the ICESCR.*

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. 2. The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes which are needed.

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.
(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

When looking at the overall meaning it can be noted that the literal meaning of the above text has tried to give priority to the adequacy of food rather than highlighting the quality level of the food and this article requests State parties to take immediate and urgent steps that may be needed to ensure ‘the fundamental right to freedom from hunger and malnutrition.

However, the interpretation given to the above article as a general comment has elaborated the meaning of the right to food to clearly include the right to safe food into the meaning of the right to food. The Committee on the Economic, Social and Cultural Rights (CESCR) as the core treaty body working under ICESCR has elaborated the right to food in General Comment 12 in 1999. According to the interpretation of the Committee the right to adequate food implies ‘The Availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.’

In a broader sense this interpretation required both quantity and quality foods to be available and two main areas can be identified in relation to the quality of food.

1. Food should contain a mix of nutrients for physical and mental growth, development and maintenance, and physical activities that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation.

2. Food should be free from adverse substances. (Foods should be safe). This sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/ or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

Apart from the above definition of the right to food, some other interpretations also can be identified. Under the United Nations which has the mandate of protection and promotion of human rights, different kinds of mechanisms have been developed for this purpose and the appointing of Special Rapporteurs
can be seen. Under the current Human Right Council there is a Thematic Rapporteur for the right to food and according to his report submitted in 2008, right to food means

“The right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”

Further, General Comment 14 which elaborates on the right to health as defined in article 12.1, is an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and……an adequate supply of safe food. Additionally the Committee reiterates the view expressed in General Comment No 12 that guaranteeing ‘access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone’ is one of the core obligations incumbent upon State Parties to grant satisfaction of the minimum essential level of the right to health.

In different contexts, several international declarations and other soft law instruments have reaffirmed the individual right to adequate and safe food. The World Declaration on Nutrition, adopted by the Food and Agriculture Organization (FAO) International Conference on Nutrition in December 1992, asserts that “access to nutritionally adequate and safe food is a right of each individual” (para. 1); the 1996 Rome Declaration on World Food Security includes the States’ commitment to “implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilization” and the related Plan of Action provides that States “apply measures, in conformity with the Agreement on the Application of Sanitary and Phytosanitary Measures and other relevant international agreements, that ensure the quality and safety of food supply, particularly by strengthening normative and control activities in the areas of human, animal and plant health and safety”; the Draft Principles on Human Rights and the Environment of 16 May 1994 state that “all persons have the right to safe and healthy food and water adequate to their well-being” (para. 8); the Declaration adopted at the FAO World Food Summit five years later in June 2002 confirms “the right of everyone to have access to safe and nutritious food” (preamble); and the 2007 Beijing Declaration on Food Safety reiterates the statement of the 1992 Declaration on Nutrition. Moreover, the view that “food safety and food security are inseparable” has been at the basis of the Pan American Health Organisation (PAHO)/WHO Plan of Action for Technical
Cooperation in Food Safety that acknowledges that food safety and security “jointly contribute to progress toward the attainment of the Millennium Development Goals, particularly the reduction of hunger and poverty.” Likewise, the FAO report on Ethical Issues in Food and Agriculture states that “achieving food security requires: (i) an abundance of food; (ii) access to that food by everyone; (iii) nutritional adequacy; and (iv) food safety”.

The United Nation has adopted two main programs namely Millennium Development Goals (MDG-From year 2000-2015) and Sustainable Development Goals (SDG-2015-2030) to achieve human rights targets and the right to food has been identified as the target number 1 of the MDG and goal number 2 in SDG (End hunger, achieve food security and improved nutrition and promote sustainable agriculture’). However it can be noted that much attention of these goals have focused on the issue of adequacy of food rather than speaking about the quality of the available food.

Under the international obligation undertaken from the above mentioned international instruments State parties are required to perform certain obligations. In relating to right to safe food, State parties are obliged to take action under the broad right to food and right to health acts. As mentioned in paragraph 36 of the General Comment, Number 14 relating to the right to health the Committee makes it clear that State parties are under obligation to adopt domestic law aimed to ensure ‘the underlying determinants of health, such as nutritiously safe food and potable drinking water ’ and to provide for implementation of such legislation. Additionally the CESR draws attention to the obligation to safeguard all individuals under the State Parties’ jurisdiction from health hazards deriving from the activities of third parties (especially private actors such as individuals, groups or cooperations), including the expressly mentioned duty to protect consumers from dangerous practices by food manufactures.

According to Article 2 of the ICESCR, State Parties are required to take steps to give the ‘progressive to full realisation’ of the economic, social and cultural rights which are recognised under the ICESCR. The reading of this article shows that these implementations are not as urgent as the obligation provided under article 2 of the ICCPR where it required respecting and fulfilling the obligation immediately. However, even under ICESCR the minimum core obligations are set and states cannot deviate from such core obligations; for example a country would fully implement the right to health by the passage of time, but providing primary health is a core obligation of a state and a state, cannot wait for resources without fulfilling core obligations. In line with this point the CESR reiterates the view expressed in General
Comment No. 12 guaranteeing “access to the minimum essential food which is nutritionally adequate and safe, to ensure freedom from hunger to everyone” is one of the core obligations incumbent upon States Parties to grant satisfaction of minimum essential levels of the right to health.

V. SRI LANKAN LEGAL FRAME WORK REGARDING THIS ISSUE.

When considering the rights based approach it is sad to note that Sri Lanka does not recognize the right to food or right to health as fundamental rights by its 1978 Constitution. Neither has Sri Lanka recognized the right to life explicitly as a fundamental right. However, the Supreme Court of Sri Lanka recognized the right to life for individuals with the landmark case of Sriyani Silva Vs Iddamalgoda, Officer in Charge, Polica Station Payagala ((2003) 2 SLR 63). Apart from the rights based approach, Sri Lankan law relating to this issue is mostly covered by the different statutes provided under different names in different areas.

The National Food Act No 26 of 1980 and subsequent amendments have referred to food safety in Sri Lanka. Article 2 of the above law states that ‘No person shall manufacture, import, sell, expose for sale, store or distribute any food (a) that has in or upon it any natural or added deleterious substance which renders it injurious to health; and (b) that is unfit for human consumption, etc…’ Further this Act makes provisions to consider anyone who breaches the provisions of the Act as a person who is guilty of an offence which is liable for a conviction. The other main Act in this regard is the Consumer Affairs Authority No 09 of 2003 which speaks on the different aspects of protecting consumers against goods which are hazardous to human life. Moreover the Health ministry also has issued circulars in this regard. Control of Pesticides Act, No. 33 of 1980 is one other Act which provides provisions in this regard. Article 20 of the Act states that “No person shall harvest, or offer for sale any food crops, in which pesticides have been used unless a time limit as may be prescribed by regulations has elapsed between such use and harvest, or if the food crops shall contain pesticide residues in excess of levels as may be prescribed”. Apart from these laws, gazette notifications and regulations issued under the Food Act also available in Sri Lanka. These gazette notifications have covered areas such as food hygiene, food standards, food preservatives, food sweeteners, etc…

VI. ANALYSIS, CONCLUSION AND RECOMMENDATIONS.

Having considered the above situation, it can be concluded that Sri Lanka has taken few steps relating to adding chemicals for agriculturally produced foods. However it is apparent that, this problem is
increasing day by day. Despite the existing law, it is not enough to cover all problems which have arisen in Sri Lanka. On the other hand, there are implementation problems in the existing laws which create loop holes and thus protection for wrong doers. The testing facilities in this regard are not adequate and not up to the required standards and there is a problem of a lack of qualified human resources in the respective institutions that should attend to these matters. Further, Sri Lanka has not yet prescribed a national list of acceptable pesticides, drugs and associated maximum residue limits. This has opened pathways to import unacceptable pesticides and also food stuffs with chemical residues, even though they are harmful for the human body. Therefore it is high time to prescribe this list. Furthermore, food safety is multifaceted which has to be understood carefully. However in Sri Lanka, institutions which are working pertaining to this issue; namely, the Department of Agriculture, The Consumer Affairs Authority, Ministry of Health, Sri Lanka Custom, The Sri Lanka Standards Institute, most of the time do not have a interrelationships and co-ordination between each. Therefore it is recommended to create a central co-ordination unit which can link all necessary stake holders. Example can be traced from Canada where they have a Canadian Food Inspection Institution which co-ordinates all institutions.

Most farmers, distributors, sellers and consumers are not aware of the harm which can be caused by chemical subsistence. Therefore, it is recommended to increase the level of knowledge among them. Farmers should be educated with safe technology which they can use for their cultivations and the harm caused by using excessive loads of chemicals for foods. Further, distributors and sellers should be educated about the proper ways of storage, transportation and food safety methodologies. Consumers also should be educated about the ways of differentiating foods with added chemicals from natural foods. The attitudes of consumers should change to buy non-toxic foods even though those foods are not attractive enough as are chemical added food.

Finally the main argument of this research paper states that the rights based approach can be utilized as a form of questioning this unethical practice. According to Human Rights obligations, a state should protect, promote and fulfill rights which are contained in conventions on behalf of the individuals of the country. The meaning ‘protect’ has been interpreted in a broader manner where it expects the government to take actions when a right of a person is violated even by a third party. In this context the threat to right to life, right to health are entitled to be questioned even though violations occur from a third party. A state cannot move away from the obligations which they have undertaken. Therefore it is imperative for Sri Lanka to consider these aspects and consider incorporation of the right to health as a
fundamental right. On the other hand, the Judiciary as the last hope of people should be ready to declare progressive and creative interpretations in their judgments understanding the international obligations undertaken by Sri Lanka.

REFERENCE


[7] International Conventions (UDHR, ICCPR, ICESCR, General Comments, Soft Law Instruments, Fact Sheets issued by OHCHR and Reports of the Special Rapporteur)

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