

The Law on Prevention of Mosquito Breeding in Sri Lanka: Adequacy of the Legal Framework for Dengue Epidemic

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Introduction

Protecting and promoting the public health of the citizens is considered as one of the key functions of the Government of Sri Lanka. However, improper environmental circumstances have now become a major factor affecting the public health and spreading of communicable diseases among the community. The proper management of the environmental factors is the only way to prevent these negative impacts to the community health in Sri Lanka.

Due to the improper environmental conditions in highly populated areas, the outbreak of dengue fever and dengue haemorrhagic fever had become a critical health problem in Sri Lanka. 51659 dengue cases have been reported to the Epidemiology Unit of the Ministry of

Health for the Year 2018¹. As there is neither cure nor vaccine for this deadly disease, the best way to prevent the spread of this fever is to eliminate the improper environmental standards and destroy the breeding grounds which cause this mosquito borne illness. In order to provide a legal solution for this concern, Sri Lankan Legislature took necessary steps to regulate the law regarding the mosquito breeding environmental factors by enacting a law in 2007.

The Prevention of Mosquito Breeding Act No. 11 of 2007 (Hereinafter referred to as the Act) was certified by the Sri Lankan Parliament on the 7th April 2007, with the aim of preventing this health crisis with a national perspective. The Act takes a preventive approach making the

¹<http://www.epid.gov.lk/web/index.php?option=com_content&view=article&id=171%3Adengue-update&catid=51%3Amessage-for-public&Itemid=487&lang=en> Accessed 25 July 2019

precautionary and polluter pays theories as the foundation of the law. This enactment has neither been reviewed nor been amended. Hence it is a timely necessity to discuss the adequacy of the provisions of the Act and the effectiveness of the implementation process.

Discussion

The act provides number of provisions dealing with the liability of the owners and occupiers of premises to destroy and eradicate any conditions that encourage the breeding of mosquitos in their environment. Especially Section 2 of the Act provides a detailed explanation on what conditions become favorable surroundings for mosquito breeding and it also imposes the obligation of eliminating such conditions on the owners or occupiers of such premises. Section 25 of the Act interprets that an Owner includes not only co-owners, lessees or individual who claims any right over a premises, but it also includes an institution, body corporate or an official who has the authority to

maintain a premises. An Occupier means an individual who is in charge or in control of any premises on behalf of himself or in the capacity of an agent of another; however this excludes the category of temporary residents².

The provisions of this Act are also applicable to all public authorities, Ministries and Departments that come under the authority of the Government of Sri Lanka³. Thus it is apparent that the Act imposes the obligation on a large group of the public to maintain their properties in a state that is not favorable for breeding of mosquitoes. The term premises includes a land together with a building or a part of a construction standing thereon⁴. Regrettably, the provisions of the Act are silent about the liability for maintaining any conditions favorable for vector breeding inside a vehicle, boat or a vessel or an aircraft.

²Prevention of Mosquito Breeding Act No 11 of 2007, sec 25

³ Prevention of Mosquito Breeding Act No 11 of 2007, sec 20

⁴Prevention of Mosquito Breeding Act No 11 of 2007, sec 25

Competent authority is given the entitlement to enter into any premises during a reasonable time of the day, for the purpose of inspecting the breeding sites⁵. However, for the purpose of entering and carrying out the inspection process, the consent of the owner or the occupier makes a pre requisite according to section 13(2). A competent authority is not eligible to enter any premises without obtaining such consent from the owner or the occupier. This precludes the competent authority from conducting random checkups and periodical follow-ups/ surveys of suspected premises. Therefore, it can be argued that this provision would be a barrier in carrying out inspections regarding improper environmental conditions that favor mosquito breeding.

If the competent authority is of the opinion that any premises is kept under a condition favorable for mosquito breeding, a written notice would be issued to the owner or the occupier of the premises directing him/ her to take necessary actions to eliminate or destroy the mosquito breeding state within

⁵Prevention of Mosquito Breeding Act No 11 of 2007, sec 13(1)

a specific timeframe⁶. Such notice could be issued personally or by handing over the notice to the owner or occupier or by affixing the notice at a conspicuous place within the premises⁷.

When section 03 is read together with the section 17 (1) of the Act, it is evident that generally a two week time period would be granted to take any corrective actions to clean up or eliminate the improper environmental condition. The Act further provides that a further extension of another two week period could be requested by the owner or occupier of such premises, and if it is granted, a total of four weeks would be granted as a grace period to take required remedial measures⁸. By granting such a long period to take corrective measures, the act indirectly allows such unhealthy environmental condition to be operative for four weeks. The ultimate consequence of allowing the existence of such condition for a period of four weeks is the creation of

⁶Prevention of Mosquito Breeding Act No 11 of 2007, sec 03

⁷ Prevention of Mosquito Breeding Act No 11 of 2007, sec 19

⁸ Prevention of Mosquito Breeding Act No 11 of 2007, sec 17 (1)

more mosquitoes during such period. Moreover, section 17 (2), (3) and (4) comprehensively describe the procedure of instituting legal action against such persons who had neglected or failed to carry out corrective measures, as mentioned in the notice. This process involves submission of recommendations by the Public Health Inspector, inspection of the premises followed by a submission of recommendations by Medical Officer of Health and granting of the final decision on whether to prosecute or not by the Competent Authority, which would obviously take at least another two weeks. Apart from the fact that the conviction process of the Act is being complicated and time consuming, it can also be pointed out that the time taken to carry out justice would be provide a corridor for several generations of mosquitoes to breed.

Section 04 of the Act provides that if any owner or occupier neglect, fail or refuse to comply with the remedial actions to clean up the improper environmental condition, he would be convicted in the Magistrate Court after a summary trial. Upon the

conviction, the Magistrate shall order the offender to pay a minimum sum of one thousand rupees (Rs.1000/=) and up to a maximum of twenty five thousand rupees (Rs.25,000/=) as a fine. However, if the offence is being continued, a fine of hundred rupees would be added for each day of such continuance⁹. Though the Act provides for a prosecution process to punish an offender who keeps or maintains a breeding ground, the sanctions given in the Act are not satisfactory since the amount payable as the fine is comparatively low and since this offence is not punishable with imprisonment, many offenders have a tendency of neglecting their obligations under the Act.

According to section 05 of the Act, if any owner or occupier fail or neglect to undertake any rectifying measures within the time stipulated in the written notice, the Competent authority can authorize any officers to enter the premises and carry out the cleaning up measures, provided any expenses incurred during such cleaning up will have to be borne by the owner or

⁹ Prevention of Mosquito Breeding Act No 11 of 2007, sec 04

occupier. In case if the owner or occupier fails or refuses to reimburse any expenses to the competent authority, the Magistrate is given the ultimate authority to inquire the matter and order the amount to be paid to the Court, considering it to be a fine¹⁰. However, such amount would be later transferred to the competent authority. This arrangement can be considered as a progressive provision, since the offenders would hardly neglect to pay an amount to the Court.

Section 08 reads that any owner or occupier who intentionally obstructs the entry of competent authority, who attempts to carry out any official duty under this Act, shall be an offender and be liable for a conviction before the Magistrate. At this juncture the Magistrate is granted the discretion to sanction such person not only with a fine less than fifty thousand rupees (Rs.50,000/=), but also with an imprisonment not exceeding six months¹¹.

¹⁰ Prevention of Mosquito Breeding Act No 11 of 2007, sec 06

¹¹ Prevention of Mosquito Breeding Act No 11 of 2007, sec 08 (2)

The Act states that the competent authority can order the owner or occupier of a certain premises to spray pesticides to mosquito breeding places, within a given time period¹². However, spraying pesticides would neither be the best solution for this deadly disease nor does it impact the environment positively. Therefore, when finding a solution to this social problem, the competing interests of public health and the sustainable development of the environment should be properly balanced.

Recommendations

Even though the act has introduced many positive provisions to prevent mosquito breeding, the above discussion discovers certain drawbacks in the Act. Thus suggesting new reforms to the Prevention of Mosquito Breeding Act, for the better and productive implementation of the Act is a timely requirement.

- Expansion of liability-

¹² Prevention of Mosquito Breeding Act No 11 of 2007, sec 07 (1)

The obligation of the owners and occupiers of vehicles, aircrafts, vessels and boats must be held liable for keeping and maintaining improper environmental conditions of vector breeding. Especially when it comes to abandoned vehicles, vessels and aircrafts, high possibility of having grounds favorable for mosquito breeding exist.

- Empowering the Competent Authority-

Competent authority or any authorized officer should have the right to enter any premises for the purpose of conducting an inspection or survey without obtaining the prior consent of the owner or occupier. This will make the inspection process faster and less complicated. The authorized officer who conducts the inspection should be given the authority to impose a spot fine on any owner or occupier. Such a fine could be not less than two thousand rupees (Rs.2000/=)

and not more than five thousand rupees (Rs.5000/=).

Further, he should be empowered to direct the owner or occupier of premises with prevailing or foreseeable improper environmental conditions favorable for mosquito breeding to eliminate or rectify such states. In case if the offender fails to comply with such directions, the authorized officer should have the authority to take legal action against such offender, without going through a lengthy administrative process.

- Special regulation on Construction Sites-

Construction sites are generally being identified as a major source where mosquito breeding conditions exist¹³.

¹³ Kumuduni Hettiarachchi, 'Tackling the dengue danger rising from major construction sites' Sunday Times (Colombo, 2nd December 2018)

Thus, it is essential to introduce specific provisions to regulate construction sites. At the approval process of a designed construction project, conditions must be imposed on the project proponent to regularly maintain the construction site clear from conditions favorable for mosquito breeding. In case if a construction site has become a ground of mosquito breeding, the construction approval must be temporarily suspended, until corrective measures are taken.

- Elevate the penal sanction by increased fines and imprisonment- The penal sanction for maintaining a mosquito breeding ground in a premises and failure to comply with the directions should consist of paying of a fine and a minimum imprisonment. In imposing the fine, construction sites and other premises should be distinguished and higher fine should be imposed on construction sites. Further, the

fine payable by the offender must be calculated based on the fact whether such person is a first time offender or not. If the offender has previous records of maintaining unsafe environmental conditions that favors vector breeding, the fine payable must be higher.

Conclusion

In conclusion, it is evident that despite having loopholes, the statutory law provides a decent backdrop for prevention of mosquito breeding in Sri Lanka. However, one significant fact to be kept in mind is that law alone would not offer the best solution for the eradication of dengue from Sri Lanka. Side by side with the legal provisions, the enhancement of public health and environmental education, active participation of the general public, open flow of information through proactive engagement of media also should be in place, in order to achieve a dengue free Sri Lanka.

