

Amendments sought to the Pesticides Management Bill 2008

Alliance for Sustainable and Holistic Agriculture (ASHA) (www.kisanswaraj.in)

The following are some of the amendments that ASHA seeks on the Pesticides Management Bill introduced in the Parliament as Bill No. XLVIII of 2008, now under the consideration of the Rajya Sabha.

Preamble:

A bill to regulate the import, manufacture, export, sale, transport, distribution, quality and use of pesticides with a view to – (i) control pests; (ii) ensure availability of quality pesticides; (iii) allow its use only after assessing its efficacy and safety; (iv) minimize the contamination of agricultural commodities by pesticide residues; (v) create awareness among users regarding safe and judicious use of pesticides, and to take necessary measures to continue, restrict or prohibit the use of pesticides on reassessment with a view to prevent its risk on human beings, animals or environment, and for matters connected therewith or incidental thereto.

AMENDMENT SOUGHT (**highlighted in bold and underlined**):

A bill to **protect safety of health and environment from the risks of synthetic pesticides**, and to regulate the import, manufacture, export, sale, **storage**, transport, distribution, quality, **price** and use of pesticides based the precautionary approach with a view to – **(i) establish sustainable pest and disease management in Indian agriculture; (ii) allow their use only after safety to human health and environment is rigorously assessed; and (iii) protect interests of producers and consumers in terms of quality, price and contamination**, and to take measures to continue, restrict or prohibit the use of pesticides with a view to prevent risks on human beings, animals or environment and for matters connected therewith or incidental thereto.

Reason: This will ensure that biosafety protection, quality and price become the cornerstones for regulation and the very need for why a regulatory statute is being enacted.

Section 3. Definitions:

Amendment sought: **DELETE (f)** "deemed registered pesticides" completely

Reason: In another section, the issue with deemed registration is explained.

Chapter II, Central Pesticides Board.

Under 4(1): **ADD: No person who has financial interest in the manufacture, import, export, sale and other trade of any pesticide, shall be appointed into any post that has been created as part of this Act; further, this removal of conflict of interest also extends to immediate family members of any such person.**

Reason: Removal of Conflict of Interest

Under 4 (2), **ADD (highlighted in bold and underlined): (xviii) two representatives of farmers, one male and one female, to be nominated by the Central Government;**

Reason: AMENDMENTS MOVED BY SHARAD PAWAR CONTAIN THIS; THIS WAS RECOMMENDED BY THE STANDING COMMITTEE ON AGRICULTURE (2008-09)'S 46TH REPORT ALSO, AND THIS IS WELCOME

ADD:

4 (2) (xix) One representative of consumer organizations, to be nominated by the Central Government.

Reason: To have key stakeholders represented in this body

Section 7: Functions and powers of Board

Under 7 (a) **INSERT parts in bold, underlined:** prevention of risk to human beings, animals and environment **including in the long term,** during the manufacture, sale, storage, transport, distribution, handling and use of pesticides and necessary safety measures and practices related thereto, **including allowing pesticide registration only when other options are not available or feasible.**

INSERT a new function, under Section 7 and **DELETE** the same from Clause 11 (2) under Registration Committee: specify guidelines for the regulation of advertising and packaging of pesticides in all media to ensure **that it leads to safe use and disposal.**

Reason: The main function should be to prevent risk to human beings and environment, especially when alternatives are present. SIMILAR RECOMMENDATION CAME FROM THE PARLIAMENTARY STANDING COMMITTEE WHICH STUDIED THE BILL.

Chapter III, Registration of Pesticides

Under Clause 11: **ADD: No person who has financial interest in the manufacture, import, export, sale and other trade of any pesticide, shall be appointed into any post that has been created as part of this Act; further, this removal of conflict of interest also extends to immediate family members of any such person.**

Reason: Removal of Conflict of Interest

DELETE 11. (1) (a) Agriculture Commissioner in the Ministry of Agriculture as Chairperson;

REPLACE WITH: 11 (1) (a) Secretary, Department of Health Research, Ministry of Health and Family Welfare as the Chairperson

Reason: Having the regulatory body under the Ministry of Agriculture constitutes a conflict of interest; it is the same principle that was used to put Food Safety and Standards

Authority of India under the MoHFW even though the MOFPI was the one that took the lead in creating the Food Safety and Standards Act.

Chapter III Registration of Pesticides.

Under 11 (2), **INSERT parts in bold, underlined:**

11 (2) The Registration Committee shall:

(i) register pesticides **for a 5-8 year period each**, after scrutinizing their formulae and verifying claims made by the applicant, **including through independent testing and analyses**, as regards their efficacy and safety to human beings, animals and environment, **including long term and chronic safety;**

INSERT, before 11 (2) (i): specify protocols, procedures and accredited laboratories and institutions for safety and efficacy testing for pesticides to be registered, including All India Coordinated Research projects for such testing

Reason: This will ensure that approvals are based on a prescribed safety assessment regime that is in place, that approvals are time-bound and automatically come up for reviews on a periodic basis, which is a principle of regulation adopted in other countries, given the fact that scientific research and evidence is constantly evolving and needs to be incorporated into regulatory decision-making. Further, the above additions will also ensure that conflict of interest in the form of safety or efficacy data presented by the applicants does not become the sole decision-making basis, and that long term testing also governs decision-making.

Chapter III Registration of Pesticides

Under Section 12 : Registration of Pesticides

INSERT parts in bold, underlined: 12 (1)Provided that the insecticides registered under the provisions of the Insecticides Act 1968, immediately before the commencement of this Act, shall be deemed to be registered pesticides under the corresponding provisions of this Act, **for a maximum period of two years in which the current Act's requirements should be complied with.**

Reason: This will ensure that all pesticides registered will be harmonized into the new statutory framework within a period of 2 years.

Chapter III Registration of Pesticides

Under Section 12 : Registration of Pesticides

INSERT parts in bold, underlined, under 12 (2): Every application under sub-section (1) shall be made in such form and contain such particulars as may be prescribed, **as findings of prescribed safety and efficacy testing regime**, including claims regarding expected performance, efficacy and safety along with usage instructions.....

Reason: To eliminate unscientific and arbitrary claims and to ensure that all applicants follow prescribed safety and efficacy assessment regime.

Chapter III Registration of Pesticides

Under Section 12 : Registration of Pesticides

INSERT parts in red, under 12 (4): On receipt of the application complete in all respects for the registration of a pesticide, the Committee may, after such enquiry **and independent testing and analyses** as it considers necessary, and after satisfying itself that pesticide to which the application relates **does not have any available alternatives**, conforms to the claims made by the importer or by the manufacturer or by the exporter, as the case may be, as regards the expected performance and efficacy of the pesticides as well as its **immediate and long term** safety to human beings, animals.... Register the pesticide **for a period of 5-8 years**, and on such **other** conditions as may be specified by it and on payment of such fee.....

Reason: As explained earlier

Chapter III Registration of Pesticides

Under Section 12 : Registration of Pesticides

INSERT parts in bold, underlined, under Section 12 (5): No pesticide shall be registered for import or manufacture unless its tolerance limit **or Maximum Residue Limits (MRL)** are specified for its residues on crops and commodities under the Food Safety and Standards Act, 2006 **and Average Daily Intake (ADI) based on cumulative or total dietary (intake) studies is fixed by Registration Committee.**

INSERT: Section 12 (5) (a) Such MRLs would be subject to periodic reviews also incorporating emerging scientific evidence.

Reason: it is important to understand that MRLs are usually and mainly created out of Good Agricultural Practices and do not indicate health safety whereas ADI as a measure does and this has to be made part of the regulatory requirement.

Chapter III Registration of Pesticides

Under Section 12 : Registration of Pesticides

INSERT PARTS IN bold, underlined:

Section 12 (6): The data submitted for the purpose of registration in respect of a pesticide under this section which has not been previously registered **shall be put out in the public domain in the interest of transparent and participatory regulation**, but shall not be relied upon for grant of registration of the same pesticide in respect of any other person for a period of three years.

ADD Section 12 (6) (a): Public feedback will be obtained by Registration Committee, for a period of at least 3 months on each application, after data has been put in the public domain, to feed into the decision-making of the Registration Committee.

Reason: Biosafety data is public interest data and should be put out in the public domain, as per SC orders in a similar matter; the public should be given space to participate in decision-making.

DELETE Section 12 (7) on data exclusivity during patent period

Reason: The patent is on the process and the product and not on its safety or efficacy data. There is no reason to hold back this data throughout the period of patent validity. The patent in any case ensures market exclusivity to the applicant. In the interest of transparent and scientific regulation, data should be put out.

DELETE COMPLETELY Section 12 (10) on provisional registration.

Reason: Two years is a long time, with provisional registration and no generation of data, that a business entity can make a lot of profit and withdraw from the market. Safety of the people and environment cannot be risked in this manner. This provisional registration clause should be totally removed.

DELETE COMPLETELY CLAUSE 12(13) AS IT EASES REGISTRATION OF PESTICIDES

Section 13: Suspension or Cancellation of Registration:

INSERT BEFORE 13 (1): Every registration is deemed to have been suspended as soon as the time period for which the approval has been provided lapses.

Reason: This will ensure that every registration comes up for automatic review as is the practice in several other countries.

INSERT under NEW 13 (1), 13 (1) (a): Every registration will also be deemed to have been suspended under comprehensive review if 3 or more other countries ban or prohibit a pesticide on health and environmental evidence.

Reason: Once again, this is a progressive practice and approach in other regulatory regimes which India should borrow from, given that regulatory decision-making should depend on emerging scientific evidence globally.

Chapter IV GRANT OF LICENCES

INSERT under 17 (3), Grant of Licence: On receipt of an application complete in all respect for the grant of a licence, the licensing officer may grant a licence, with a period of three months from the date of receipt of the application complete in all respects, in such form, on such conditions, **including where, when and at what price**, and on payment of such fees as may be prescribed..

Reason: To empower state governments to regulate where a given pesticide can be sold, at what time of the year and at what price towards meeting the overall objectives of this statute.

Section 21 on Central Pesticides Laboratories

Section 21 (1) **TO BE AMENDED** as under: **Provided further that the Central Government may recognize private laboratories that follow Good Laboratory Practices and are accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL) to carry out any or all functions of the Central Pesticides Laboratory on fulfillment of such criteria and procedure as may be prescribed.....**

Reason: As recommended by the Standing Committee on Agriculture in its report on the Bill.

Chapter VI ANALYSIS OF PESTICIDES

INSERT the matter in bold, underlined, under Section 32 (1) Notification of Poisoning: The state government **SHALL**, by notification in the official gazette, specify any person or class of persons to report all occurrences of poisoning through the use or handling of any pesticide, **through a regular system of surveillance put in place**, as specified in the said notification.

Reason: This will ensure that monitoring is taken up in a mandatory fashion through scientific surveillance.

INSERT A NEW CLAUSE, under Section 32: Notification of poisoning,

New Section 33: Monitoring of Residues: The state government shall monitor pesticide residues in food, soils, water and human beings in a specified, periodic fashion and put out the findings of the same on a six-monthly basis, for an adequate sample of commodities and locations.

Reason: Today, this is one of the major issues: the fact that a somewhat opaque scheme is used by the government for monitoring residues, whereas something like this has to be embedded in the law, with proactive sharing of information so that such monitoring will also allow for rational action to follow by the concerned authorities.

Chapter VII OFFENCES AND PUNISHMENT

DELETE Section (35) on use of pesticide in contravention of Act.

Reason: This appears to be directed at illiterate and uneducated farmers and is best removed, given that liability on manufacturers, sellers, stockists etc., is specified in the subsequent clauses.

Section 37: Punishment for misbranded pesticide

REPLACE WITH WORDS IN BOLD, UNDERLINED: Section 37: Whoever imports, exports, manufactures, sells, stocks or exhibits for sale or distributes any misbranded pesticide shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to five lakh rupees or with imprisonment for a term which may extend to two years, or with both.**

*Reason: The penal clause should be deterrent enough and therefore, has been strengthened. **FURTHER, THE AMENDMENT MOVED BY MR SHARAD PAWAR FOR COMPOUNDED OFFENCE IS WELCOME.***

DELETE Section 43: Cognisance and trial of offences.

Reason: This is the only way that the right of farmers as consumers of this commodity can take resort to other laws like Consumer Protection Act.

Section 51: Compensation to farmer or affected person

ALTER CLAUSE 51: Every pesticide sold to a farmer, producer, stockist, distributor, retailer or pest control operator, as the case may be, shall disclose the expected performance, efficacy or safety of such pesticide under given conditions, and if the pesticide fails to provide the expected performance or causes any harm to human or animal health or damage to the environment by use of that pesticide, then the farmer or affected person may claim compensation from the manufacturer or distributor or stockist or retailer or pest control operator as the case may be, through a Compensation Committee to be set up under this Act. Such a Compensation Committee may be set up by the State Government in each state,

ADD 51 (1): The state government shall prescribe:

- (a) the composition and experience of members of the Compensation Committee;**
- (b) procedures to be followed by the compensation committee, including time frames for disposing off any complaint in a time-bound manner;**
- (c) manner of giving compensation;**
- (d) time within which the compensation shall be paid from the time of the order of compensation to be paid, by the Compensation Committee, which could be in the form of technical services in case environmental remediation is required;**
- (e) role of Panchayats in ascertaining and certifying losses and damages;**
- (f) establishment of district level compensation committees where required.**

Section 52: Segregation and disposal of Pesticides

ADD (bold and underlined): Section 52: A batch of pesticides that has outlived its shelf life, or a batch that has been declared to be misbranded, substandard or spurious or has been banned shall,.....as may be prescribed, **with the responsibility of such safe disposal including its costs borne by the manufacturer or importer as the case may be.**

Reason: This is a natural extension of polluter pays and extended product responsibility.
