

Paper ID: 669

Regulating Food Advertisement in Sri Lanka and Curbing Childhood Obesity: The Way Forward

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Abstract- Advertising and marketing unhealthy foods and beverages to children has affected the dietary preferences, food choices of children. Both foreign and local studies have also proved a positive relationship between the times spending TV advertisement with the junk food habit which leads to the obesity of children. In this context, this paper will discuss the legal frameworks at international level and Sri Lankan and the different practices adopted othercountriesandwillsuggest recommendations for a better legal framework forSriLanka. Even though this study multidimensional by nature, this study only focuses on understanding the legal framework of Sri Lanka on this issue. This legal research is based on legal material and has utilized the qualitative methodology of data analysis to reach findings. The international conventions, WHO guidelines, journal articles and books have been used as primary sources and the research conducted by the other researches have been used as secondary data. Finally, it can be concluded that the Sri Lankan legal system has taken effort to address this problem. However, there are many lacunas can be identified in implementation level.

Key words- Right to safe, food Childhood obesity, Advertising regulations

I.INTRODUCTION

According to the World Health Organization (WHO) statistics, obesity has tripled since 1975 worldwide and it is noted that most of the world population dies due to overweight and obesity than due to underweight. These figures are quite similarly applicable to children across the world and it was reported that 38 million children below the age of 5 were obese or

overweight in 2019. Even though once it was considered as a problem faced by developed (high income) countries, it is now even increasing in developing (low and middle income) countries. It is noted that the number of overweight children below age 5 has increased by nearly 24% in the African region. Furthermore, since 2000 almost half of the children below age 5 who lived in the Asian region were obese or overweight in 2019.

In the Sri Lankan context, a study done by Katulandaetalin2005reportedthat percentages of Sri Lankans being overweight as 25.2%, obese as 9.2% and abdominal obesity as 26.2%. Focusing only the urban population of Sri Lanka, Somasundaram et al has conducted a researchin2019 andconcludedthatthe percentages as overweight as being 37.5% and obese as 15.8%. A study done in relation to children the overweight and obesity prevalence among children in Sri Lanka shows different ranges with provincial and gender variations. According to that study, among boys and girls between 8 and 10 years this was 4.3% and 3.1% respectively and obesity prevalence among primary school children in Colombo district is 5.1%in 2008(Mohomad S.M, 2015).

II. RISK OF BEING OBESE

More than 75% of obese children will become obese adults (Litwin, 2014) and it can affect any organofthebodyfromheadtotoe (Wickramasinghe, 2016). Those who were obese at a very young age are at higher risks for associating chronic diseases such as hypertension, dyslipidaemia, type 2 diabetes, heart disease, stroke, gall bladder disease,

osteoarthritis,sleepapnoeaandrespiratory problems,andcertaincancers(Markus





Juonala,2011, Kelsey, 2010, Singh A.S.,2008). Research has also shown that childhood obesity can leave a permanent imprint on the health of the individual, so that even if the body mass index (BMI) is controlled later in life they have an increased risk for Non Communicable Diseases(NCD)relatedcomorbidities

(Wickramasinghe,2016). Obesity affects children physically, as well as psychologically. Psychological effects intensify with increasing age. Bullying, peer rejection, lack of friends and lack of self-confidence could be seen at school and low job opportunities and lack of

companionship later in life (August GP et al, 2008). Moreover, this obesity epidemic also has many economic consequences (Wang. Y and Lim H, 2012). Therefore, addressing weight gain during childhood is an important priority for countries because doing so reduces the growing burden that obesity imposes on the health care system, on employers and the economy, and on affected individuals and their families (WHO report, 2016).

III. BAD ADVERTISING AS A CAUSE FOR OBESITY AMONG CHILDREN

Taking high dense of calories than required level will lead to obesity and therefore, selection of food that a child eats determines the BMI level of the child. However, in this context it is essential to see whether there is a positive relationship between advertising of the food and the selection of food. Studies have proved that advertising and marketing of unhealthy foods and beverages to children as an important, modifiable risk factor affecting the dietary preferences, food choices, and weight of children(Gerard Hastings et al, 2006). Large, multinational food companies spend massive sums of money on advertising and marketing their products to young people (Jon Leibowitz et al, 2012, Lisa M. Powell et al, 2013), and the majority of this publicizing is for unhealthy goods such as sugar-sweetened cereals, soft drinks, confectionery, and fast food(Georgina Cairns et al, 2008).

Children spend more time in front of different types of media including mobile phones, computers and television. Media is a powerful tool which leading to changing an idea and perception of individuals. It can be noted that in the Sri Lankan context, Television is the most popular media for which people have easy access. Different channels telecast varieties of programme on Television targeting different segments of the public. TV channels broadcast programme as a business and one of the best ways of earning a good income is the telecasting of advertisement in between programmes. The objective of publishing an advertisement is to promote a product or a service and the selection of the time slot for telecasting the advertisement varies according to the product. For example if the product is about a sweet food item for children, the advertisement telecast during a child programme If the advertisement is about sports items, it is telecast during a sports programme. The advertisements have the power to change the ideology of people,s mind compelling them to buy unnecessary things. Systematic reviews find moderate to strong evidence that these promotions influence children's food preferences, purchase requests, and actual consumption patterns, to the detriment of children's diet-related health (Gerard Hastings et al, 2003). The children tend to believe what is shown on TV. Another concern is that children are particularly vulnerable to advertising, with children under the age of seven years generally unable to distinguish between editorial and promotional content(SoniaLivingstone&Ellen Helsper,2004), and most children developing a critical understanding of advertising around the age of 12 years. When an advertisement shows that a child gets the power and flies in the sky after drinking some artificial drink the viewer, (the child) believes it as a truth and pushes their parents to buy that drink.

Fernando T et al (2019) proves the link between TV viewing and the obesity in a study conducted previously by using a Sri Lankan school aged children. This particular study was



done to investigate the connection between obesity among school children and television advertisements and further to see the link between the food habit and advertisement and it proves that there is a positive relationship between the times spending TV advertisement with the junk food habit which lead to the obesity of children. Fernando T et al (2015) again found by the other study that most of the advertisements on all television channels for children were food that contained high-fat and high-sugar foods. Further they found that children in Sri Lanka have a high-level exposure to advertising for unhealthy food products. By proving this positive relationship between TV viewing and childhood obesity, Samaraweera, G.R., & Samanthi, K. (2010) also found that, food demand of children is created by children by themselves and by parents for their children.

Any government of any country has the responsibility of protecting children of their jurisdiction and the enabling proper legal regulationstominimizeadvertising malpractices is one of the ways to protect children.

IV.OBJECTIVE OF THE STUDY

In this context this paper will discuss the legal frameworks at international level and Sri Lankan level. Finally, this paper will discuss the different practices adopted by other countries and suggest recommendations for a better legal framework for Sri Lanka. The main research questions will be: What is the level of state part obligations to address this issue? What are the laws implemented in Sri Lanka on this issue? How far we can appreciate the Sri Lankan law? What are the good practices of other countries and how far we can adopt those in Sri Lanka?

V.METHODOLOGY

Even though this study is multidimensional by nature, this study only focuses on understanding the lacunas of the legal system of Sri Lanka which has contributed to this food safety problem. This legal research has been based on the documents and has utilized the qualitative methodology of data analysis to reach findings. Selecting of qualitative approach

could be justified as it allows the author to provide a complex textual description on the different texts writing on the subject matter. Among the differentmethodsunderthequalitative methodology, the author utilized the content analysis method for this research. The author used many contents which are in different places for this study. The international level and the practices of the other countries have looked out by the international human rights instruments, WHO guidelines and different

other reports. The domestic situation has been

analyzed using the Constitution, other statutes,

case reports and other studies done in the same

area. Apart from that books and journal articles

VI. DISCUSSION AND FINDINGS

have also been used for the analysis.

A.State party obligation under international law

Sri Lanka is not an isolated country in the world, and it has immense responsibilities, obligations and recognition throughout the world by accepting and ratification many of the major international conventions. This state obligation to take actions to regulate advertisement seen by children has discussed in international convention and Convention on the Rights of the Children (CRC) can be named as one of the best instrument dealing in this aspect. According to the provisions of the CRC parents or the guardian are under the primary obligation to safeguard their child's health and development. It is also the duty of the state to assist and provide facilities and services (Article 18(2)). Article 24 of the CRC specifically focuses on the Right to health of the children. The General Comment 15 issued by the United Nation Committee on the Child Rights which provide a wide interpretation to the Article 24 of the CRC defined in article 24 as an inclusive right, extending not only to timely and appropriate

prevention, health promotion, curative,

rehabilitative and palliative services, but also to a right to grow and develop to their full potential and live in conditions that enable



them to attain the highest standard of health through the implementation of programmes that address the underlying determinants of health. The state responsibility initiated under the term 'adequate nutritious foods' written in the Article 24(2)(c) has been broadly interpreted as follows.

"States should also address obesity in children, as it is associated with hypertension, early markers of cardiovascular disease, insulin resistance, psychological effects, a higher likelihood of adult obesity, and premature death. Children's exposure to "fast foods" that are high in fat, sugar or salt, energy-dense and micronutrient-poor, and drinks containing high levels of caffeine or other potentially harmful substances should be limited. The marketing of these substances – especially when such marketing is focused on children – should be regulated and their availability in schools and other places controlled."

Further by giving particular reference to the responsibility that should be fulfilled by private sector under the CRC the general comment

"All business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the Convention. Among other responsibilities and in all contexts, private companies should: comply with the International Code of Marketing of Breast-milk Substitutes and the relevant

HealthAssemblyresolutions; limit

emphasis that

subsequent

advertisementofenergy-dense, micronutrientpoorfoods, and drinks containing high levels of caffeine or other substances potentially harmful to children."

Further the Special Rapporteurs on the Right to Health and Food, identified as the central person working on this Right, has highlighted the link between an unhealthy diet, obesity and non-communicable diseases in his annual report. He supplementary that "states have a positive duty, under their duty to protect, to

regulate advertising of unhealthful foods". Partnership between commerce and government was suggested as a substitute to self-regulation.

Additionally, The World Health Organization (WHO), in 2010 issued some recommendations on Marketing of Foods and Non-Alcoholic Beverages to Children that invited all member states to initiate policy measures to call on member states to decrease children's exposure to, unhealthy food marketing.

Further, the International Chamber of Commerce some observations also set which shouldbeutilizedwhenusingmarketing communicationsaddressingchildren. It emphasis that: the particular communication should not undermine positive social behavior, lifestyles and attitudes; the **Products** unsuitable for children or young people should not be advertised in media targeting them; and advertisements directed to children or young people should not be inserted in media where the editorial matter is unsuitable for them.

B.Sri Lankan legal framework

The current regulatory framework of Sri Lanka pertaining to regulating of advertisement can be listed as follows. The Food Act No 26 of 1980 can be identified as major legislation in this regard. Section 3 (1) of the Food Act stating that, "No person shall label, package, treat, process, sell or advertise any food in a manner that is false, misleading, deceptive or likely to create an erroneous impression, regarding its character, value, quality, composition, merit or safety." It is also mentioned in the Section 4 of the Act that, "Where a standard is prescribed for any food, no person shall label, package, sell or advertise any food which does not confirm to that standard in such a manner as is likely to be mistaken for the food for which the standard has been prescribed.

Under provisions of the Food Act the ministry has the power to issue gazette notification regarding any matter concerning to this Food Act and up to now many gazette notifications

World



have passed. Food (Colour Coding for Sugar levels) (Gazette Number 1965/18) is one such important regulation. This regulation is effective from from 01-08-2016. According to this regulation "No person should **advertise** carbonated beverage, Ready to serve beverages other than milk-based products, Fruit Nectar and Fruit Juices unless it labeled in with the numerical description of the sugar content, description of the relative sugar level and colour code (Red, amber and Green).

Food (Sweeteners) Regulation 2003 (Gazette NotificationNumber1323/1issuedon 2004.01.12) is also important in this aspect. It stated that "No person shall **advertise** any sweetener other than a permitted sweetener for use in or on any food. It is also recommended to display in writing on the label of the package contained that food about the description about the sweeteners used in clear and legible manner. It is also mentioned in the gazette that even thoughsomesweetenersare permitted (example: aspartame), since it is not good for children and the word 'not recommended for children' should be printed in clear and legible letters.

Secondly the Consumer Affairs Authority Act also provides certain regulations in this regard. According to one such regulation, advertising of infant (below 1 year) milk powder is totally banded. Further Direction number 7 issued on 2007 required every advertisement in respect of the sale of any article published in any media to mention the retail price of such an article.

Thirdly, Health Ministry together with the Education Ministry has approved the Canteen Policy in Sri Lanka by maintaining the norm that, when school food environment can be made healthy, it influences students to make healthy food choices and develop healthy eating habits (Mensink F, 2012). The initial Policy was approved in 2007 and late in 2011. Another Circular number 2011/03 was issued by the Ministry of Education regarding the foods which should be available in school canteen. One of the key objectives of this policy is to

optimize the educational performance among school children by improving their nutritional status. According to the provisions of the above circular, promotetheavailabilityofhealthyfoods, (grains, vegetables, fruits, foods contain proteins, porridge and healthy drinks) it is clearly banded from selling high fat foods (Sausagespastries), Highsurgeitems, (Chocolate, Toffees, Donuts, ice packets and syrups and flavored drinks), High salty food items (Pizza, Tipi Tip, Bites, Vegemite and Marmite), Junk food and Zero Calorie Items. Further it is required to limit the Deep-fried food items such as roles and cutlets.

National Child Protection Authority has recently developed the National Policyon Child Protection (2017) and one of the objective of this draft policy is to ensure delivery of effective services and secure a supportive environment that prevents and reduces harm to children from a wide range of threats to their protection, and promotes their safe and **healthy** development, with benefits for individuals, families and wider society. Creating an environment which helps vulnerable children to choose their healthy food, rather than get caught into food advertisements can be considered as one such initiative taken by relevant parties.

In additiontotheabovelegislations, The Intellectual Property Act, 2003, protects the trademarks of the industry and if anyone uses their trade names to mislead consumers that companycansueagainst thewrong doer according to the provisions of the Act. Likewise, Cosmetic, Devices and Drugs Act, (1980), and Obscene Publications Ordinance (1983), also addresses them is leading advertisement in general

One of the other approaches which need to be addred in this study is the legality of using childreninadvertisements. In the current context where the promotional strategy has shifted from 'marketing for the children' to 'marketing by the children' (Sudeep. L, 2017) and the time when marketers have been





researching for the best tool to influence children it is vital to study the regulatory framework which concerns using children in advertisements. When parents were questioned about this, 43 % of parents, agreed while 40% of them were neutral. Currently Sri Lanka does not have any of the law to regulate this matter. As children are in capable of providing consent according to the general principles of law, parents or guardian's consent is required before child is taken for advertisement.Otherthanthis,SriLankan

Rupavahinie (Television) corporation code of advertising standards and practice code, which was drafted long time back (1985) has some guidelines in this regard. It emphasizes the following:

"No products or service may be advertised and nomethodofadvertisingmaybeusedin association with a programme intended for children or which large numbers of children are likely to see, which might result in harm to them physically, mentally or morally, and no method of advertising may be employed which takes advantage of the natural credulity and sense of loyalty of children." However, we should understand that, these are only guideline or practicewhichdoesnothaveanylegal enforceability.

Therefore, it is very much important to regulate this area of law.

C. Good practices of other counties

Whenlooking at the practices of other jurisdictions the following observations can be noted. In Turkev "Regulation on **Procedures** Principles of Broadcasting Service" amended in 2018. With the amendment it has been explained how the advertisements on foods and beverages which can lead to bad health of the children are limited when children program is broadcasting. They have taken the Food Profile Model and the prepared Foods and Beverages List from the Ministry of Health and according to that they have classified all the advertisement into three categories allocating red, orange and green colours. Red category (foods such as "chocolate, sugar, fruit

juice, cake, energy drink, biscuits, cookies, chips,) was determined as the foods and beverages that are not allowed to be advertised during children programs, orange category (foods such as "nuts, breakfast cereals, crackers, whole milk, dough products, dairy products, fat...) as foods and beverages allowed to be advertised if the specified criteria are satisfied and green category ("fresh fruits, vegetables, meat, fish, eggs...") as foods and beverages allowed to be advertised.

Sweden has the strictest regulation with a ban on radio and television commercial advertising which targets below the age .Furthermore; in 2013 all the companies' came to an agreement of self-regulation which banned advertising of unhealthy foods and beverages for children below 16 years old. In Belgium it is not allowed to broadcast any commercial 5 minutes before and after the Children's programe. In Chile, promotional and advertising targeted children below 14 years old for High Fat, Sugar and salt foods (HFSS) foods is limited in media. The Quebecgovernmentimplementedalaw controlling junk-food advertising for kids under 13 years old in both electronic and print media in 1980. In Mexico, aregulation passed to restrictpromotingofunhealthyfood advertisements in specific time of the day if the 35% of the audience under 13 years old. By going a step further, in 2017 the United Kingdom introduced stringent their rules limiting child's exposure even for virtual spaces. According to this new law it is not allowed to advertise **HFSS** food advertisementsonwebsitestargeting children.

VII. CONCLUSION AND RECOMMENDATION.

Even though international regime suggests an obligation that should be fulfilled by the State party it cannot be seen that the responsibility is fulfilled in an equal manner everywhere. One of the major reasons for this failure can be identified as the level of enforceability of such international recommendations. The General Comments issued under the Conventions on the



Rights of the Child (CRC) are considered as a broader interpretation for the articles of the convention, but general comment is not per se enforceable before law. This quite similar with the implementation of right to safe food under the International Covenant on the Economic, Social and Cultural Rights (ICESCR) where it required state party 'take action' in 'progressive to full realization' of the rights mentioning in the ICESCR. Furthermore, recommendations issued by the WHO belong to the category of soft law f whichdoesnotarisehighpower enforceabilitylikehardlawssuchas Conventions. Referring to the WHO guideline of 2012 the WHO in 2016 at the Global Commission on Ending Childhood Obesity highlighted the letdown of WHO member states in the above implementing WHO's recommendations.

Nevertheless, it is apparent that, even though Sri Lanka has taken some efforts to regulate the advertising it is not sufficiently effective to address the bottom-line problems in Sri Lanka. In their study, Reeva and Magnusson (2018) comparedthelegalframeworksofsix jurisdictionandidentifiedthreemodelof regulatoryframeworkswhichrestrictfood marketingforchildrennamely:statutory regulation, where a government develops and implements the regulation; co-regulation, where the regulatory procedure is shared by public and private bodies; and self-regulation, where the industry itself writes, monitors, and enforces the rules. Sri Lanka has few statutory regulations anditisonlytheRupavahinie (Television) corporation code of advertising that can be named as self-regulation which they limit themselves in using children in advertising. Many of the statutory regulations prevailing in Sri Lanka are not much effective in protecting the health right of the children. Even thereareregulationsaboutthefood though standardizing, banning of certain chemicals, listing out approved chemicals that could be added to food, the awareness of the public is less, and details of this regulations are not

displayed intheadvertisement. For example, it is compulsory to mention the level of the sugar content and the relevant color codes in the label of any artificial drinks. However, showing these details is not compulsory and it is only the displaying price that is compulsory in the advertisement.

Finally, it can be concluded that Sri Lanka can learn many lessons from other jurisdiction to regulate the advertising targeted on children. In this context the government, as the main and the most capable body implementing rules and regulation, should come front and take the initiative of drafting new rules and regulations. It is also the duty of the private commercial sector to take prompt actions by enabling self-regulations aiming of cultivating healthy food habits among children rather that running behind only profit.

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