

Puzzling out the Issue of Obesity under the Human Rights-Based Approach

MKG Jeewanthi¹ and MDK Kaneshika²

¹*Department of Legal Studies, The Open University of Sri Lanka*

²*MJF Charitable Foundation, Sri Lanka*

#mkjee@ou.ac.lk

Abstract - The COVID- 19 pandemic has been the most devastating health catastrophe that humanity has faced recently, and recent research from several nations have clearly shown obesity as a prevalent attribute among persons who were seriously ill after getting the Corona virus. Obesity has become a global pandemic, causing many people to succumb to non-communicable diseases (NCD). The World Health Organization (WHO) has highlighted consuming an unhealthy diet, which mainly consists of high-fat, high-sugar, and high-salt foods, as a primary cause of obesity. In light of this background, the researcher in this work aims to provide an analysis for the obesity problem that is founded on human rights. The researchers aim is to examine the obesity problem through the lens of human rights, identifying potential human rights violations as well as state party obligations in this regard. In the meantime, the researchers attempt to give remedial options that are based on human rights and specific activities that different stakeholders might do to alleviate the obesity problem induced by eating unhealthy meals. This is a legal study, and the researchers used doctrinal analysis methods to accomplish it. Finally, it can be concluded that a human rights-based approach to addressing the health issue can be effective, and that individuals may be able to file a case under the broader definition of right to life against the state party for failing to take adequate steps to regulate the food industry, which causes obesity.

Keywords— *food safety, obesity, HRBA*

I. INTRODUCTION

Overweight and obesity are defined by the World Health Organization (WHO) as abnormal or excessive fat accumulation that can harm one's health and it's considered as a one form of malnutrition (General

assembly Reso no: A/71/282, 16th August 2016). The Body Mass Index (BMI) is used to measure these conditions and a BMI of greater than or equal to 30 is determine an obese adult while a BMI of greater than or equal to 25 is considered to be overweight. According to global statistics, 39 % of adults aged 18 and older were overweight or obese in 2016, with precisely 13% being obese.

The gravity of the obesity issue more reflected recently with the Covid 19 pandemic which is widely regarded as one of the worst human health disasters ever as it resulted in the deaths of millions of people in a short period of time. Despite the fact that there are few other causes for this high rate of death, recent studies emerged from multiple countries have clearly identified obesity as a common trait of people who became critically ill after contracting the Corona virus (Mohammad et al., 2021; Zheng et al., 2020). According to studies, a BMI is a powerful indicator of illness severity in people younger than 60 years old (Lighter we al.,2020; Iacobellis et al., 2020; Zhang et al., 2020).When looking at the reasons why obese people are more prone to life-threatening situations, it is important to understand that people who are obese have a higher prevalence of diseases such as cardiovascular disease, Type 2 diabetes, renal insufficiency, some types of cancers, and a considerable number of endothelial dysfunction (Mohammad et al., 2021). As a result, it is evident that obesity is a threat to a healthy human lifestyle that must be addressed immediately.

Obesity can be caused due to certain reasons or conditions. Among the reasons such as unhealthy diet, lack of physical excise, genetic factors and medical conditions that leads to obesity, the WHO particularly identified that consuming unhealthy diet or consuming high-fat, high-sugar, energy-dense foods or consumption of unhealthy diet as well as a lack of supportive policies in sectors such as health, agriculture, food processing, marketing, and

education, exacerbate the situation. Some of the researchers also found that the main behavioral risk factors for obesity are excess consumption of foods and beverages including alcohol (Traversy (2015), Nyberg et al (2018), Popkin & Reardon(2018), Patterson et al., 2019).

Unhealthy diet has been featured and described in different level in multiple studies and among other types of food main three categories namely, high **sugary** foods, high **salt** foods and foods contains **trans-fat** can be identified as main causes of obesity and bad health. Scientifically, sugar that has been added is half glucose and half fructose. Despite the fact that humans get glucose from a range of foods, including starches, the majority of fructose comes from added sugar, which alters your body's hormones and biochemistry, resulting in weight gain. Insulin resistance and increased insulin levels are also caused by excessive fructose consumption. In food science there are two main types of carbohydrates identified and foods such as sugar, desserts, fructose, soft drinks, beer wine and ect.. categorized as simple carbohydrate which is dangerous for human health and complex carbohydrates such as brown rice, grains, pasta, vegetables, raw fruits and etc. When comparing with the complex carbohydrates, foods that contains the simple carbohydrates are more rapidly absorbed into the bloodstream which leads to pronounces insulin release after meals which promote the growth of fat tissues and cause obesity. Foods with high level of sodium (salt) contribute to the of accelerate of human blood pressure which leads to many non-communicable diseases (NCD's). Trans- fat is another risk factor which cause severe damage to the human health. The junk foods consist all sort of high salt, sugar and fat are made to be inexpensive, survive a long time on the shelf, and taste so delicious that they are difficult to resist, resulting in overeating. These types of foods allow to trigger the reward center of the human brain, and these foods are comparable to abused drugs like alcohol, cocaine, cannabis, and nicotine. As a result, people who consume too much junk food lose control over their eating habits. Taking little of these foods would not cause that severe harm to human body, however, given their high accessibility and deliciousness, and due to sharp marketing strategies people are now addicted to this type of unhealthy foods. While excess calories consumed from unhealthy foods can be burned through physical activity, the shift in technology from labor-intensive to service-oriented occupations, as

well as changes in modes of transportation, has resulted in sedentary lifestyles, resulting in decreased regular exercise and energy expenditure (Barry, 2006). The processes of globalization, in particular trade and Foreign Direct Investments (FDI) in food processing, retailing, and food advertising and promotion, have been increasingly associated with driving shifts in dietary patterns towards those closely linked with obesity (Corinna, 2006).

II. OBJECTIVES OF THE RESEARCH.

The overall goal of this theoretical research is to look at obesity problem from a legal standpoint utilizing a human rights-based approach (HRBA), which decides how to provide solutions for a specific situation based on human rights norms. Further, there are three distinct aims in this study that can be defined;

1. to determine which specific individual rights are being violated by permitting people to consume an unhealthy diet that leads to obesity,
2. to identify the state responsibility of such violations.
3. to explore possible remedial measures/ actions that can take to protect the right to health of individuals.

III. METHODOLOGY

This is a legal research based on the doctrinal methodology which provide a theoretical argument throughout the research. Researcher has used constitutions, legislations, regulations, directives, international conventions & other instruments as primary sources and text books, dictionaries, journal articles, reports, commentaries, general articles and like as secondary sources for this study.

IV. DISCUSSION AND FINDINGS

A. *Human rights-based approach*

HRBA is a commonly used terminology in any forum related to human rights. Even though this term uses from the inception of the human right it is difficult to arrive at the universal definition for this word HRBA(Kapur & Duvvury 2006). A number of definitions for HRBA have been provided by various scholars in different forums, and these definitions are defined by academic literature in different ways, based on legal, social and political perspectives.

According to the interpretation provided by the United Nations International Children's Emergency Fund (UNICEF)"a HRBA 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. It seeks to analyze inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. (*What Is HRBA?*, n.d.). The United Nations Development Program (2003) explains that “in a HRBA, human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty bearers). It works towards strengthening the capacities of rights-holders to make their claims, and of duty bearers to meet their obligations”.

B. specific individual rights are being violated

In this section, the researcher analyzes the specific human rights that are threatened as a result of obesity. A right-based approach is derived from the idea that every human being is a holder of rights by virtue of being human. A ‘right’ is something which helps individuals to live with dignity and there is a clear difference between rights against needs and the rights against charity (Kapur & Duvvury 2006). Universal Declaration of Human Rights (UDHR) is the main international document pertaining to the human rights. Later, the United Nations drafted two key covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which recognized all types of human rights and obliged state parties to take measures to implement those rights in their respective jurisdictions.

The following rights, among those recognized by various international instruments, may be considered violated by consuming an unhealthy diet that leads to obesity.

1) Right to health

The right to health is a fundamental human right that underpins all other human rights. Every human being has the right to the best possible health, which is necessary for living a dignified life.

This crucial right is acknowledged in a number of international documents. As the core document right to health is mentioned in the Article 25 of the UDHR as “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care

and necessary social services”. By providing a most comprehensive definition the ICESCR recognized thus right in the article 12.1 stating that, states parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”, while article 12.2 set forth, by way of illustration, an amount of “steps to be taken by the States parties ... to achieve the full realization of this right”. Further this right also mentioned in the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 (article 5 (e) (iv), Convention on the Elimination of All Forms of Discrimination against Women of 1979 (articles 11.1 (f) and 12) and Convention on the Rights of the Child of 1989 (article 24).

The Committee on Economic, Social, and Cultural Rights (CESCR) issued General Comment 14 to expand on article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), stating that the right to health is an inclusive right that includes not only timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health.

Obesity has obviously reduced people's enjoyment of their right to health. Obesity, as discussed in the introduction chapter, has resulted in a slew of NCD's and has a negative impact on both physical and mental health. It indicates that the availability of food in and of itself is insufficient for the enjoyment of the right to health; only food that is safe for human consumption leads to the attainment of the standard of health.

2) Right to food

The right to food must be distinguished from the right not to starve. It is an all-inclusive right to an adequate diet that includes all of the nutritional elements that a person needs to live a healthy and active life, as well as the means to access them. (De Schutter- special repaourter report submitted to the General Assembly- 26-12- 2011). Food security is defined by the Food and Agriculture Organization (FAO) of the United Nations as the situation where “all people, at all times, have physical and economic access to sufficient, safe and nutritious food necessary to meet their dietary needs and food

preferences for an active and healthy life” (FAO, World Food Summit Plan of Action, para. 1 (1996)). One of the most important aspects of the right to food's history has been the identification of hunger as the fundamental cause of malnutrition. However, the scope and definition of the term "right to food" has varied over time. Currently, in the enjoyment of the right to food, the quality of the meal is just as important as its adequacy. Right to food is also recognized in the main documents such as UDHR and ICESCR. The Article 25 of the UDHR discuss the right to food in the context of an adequate standard of living and it states that and mentioned that; “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food,”.

Article 11 of the ICESCR is the major article which describes the right to food in details. It provides that; “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..... ” ICESCR section is also more focused on the adequacy and it spell out obligations for state parties to take action to eradicate hunger in their respective jurisdictions. Randolph, et al, (2012) emphasis that while Article 25 of the UDHR identified right to food as a one aspect of right to a standard of living adequate to ensure the health and wellbeing the Article 11 of the ICESCR goes beyond identifying the right to food as an aspect of the right to an adequate standard of living and articulates two separate, but related norms: the right to adequate food and the right to free from hunger.

The General Comment no.12 issued by the CESCR in 1999 for the elaboration of the meaning of right to food and in this document right to food was defined in broader manner which opening the path ways to the quality. It stated that; “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....’ is important defining the right to food. In a broader sense this interpretation required both quantity and quality foods to be available and accessible and since this study is mainly focused in the area of quality of food and the quality has two folds. That is, food should contain a mix of nutrients for physical and mental growth, development and maintenance and food should be free from adverse substances. The unhealthy diet that leads to obesity belongs to the first part of the definition as this type of diet mostly consists with only fat, sugar and simple

carbohydrates which are considered to be more dangerous to human health.

3) *Right to life*

The right to life is a first-generation right, as stated in article 6 of the International Covenant on Civil and Political Rights (ICCPR), and it is also acknowledged in article 6 of the UDHR. Obesity has a direct link to human health, as stated earlier in this research article, and with the emerging results of the Covid 19, it is a well-established truth that obesity has invaded individuals' right to life. Obesity-related ill health can shorten your life expectancy; hence it could be claimed that there is room to address this issue under the right to life definition. Further in General Comment 36, the Human Rights Committee, which is the treaty body provided for under the ICCPR, insists that the right should not be interpreted in a restrictive manner and that it should concern the inclusion of individuals to be free from acts and omissions intended or anticipated to cause unnatural or premature death. It further provides that States Parties should take effective measures to address the general conditions in society which are likely to give rise to direct threats to life or to prevent individuals from enjoying their right to a dignified life. Actions taken to reduce widespread hunger and malnutrition, as well as efforts meant to ensure persons have timely access to essential commodities and services, such as food, may be included in these broad terms and conditions.

4) *Other related rights*

In addition to the rights listed above, obesity has the potential to violate or jeopardize some of these rights. Obesity has a societal stigma which has decreased the level of enjoyment of rights such as the right to non-discrimination, right to education, right to privacy and freedom of associations.

C. *State party obligations to minimize such violations*

The distinctive difference between international treaties and human rights treaties is that individuals are the primary beneficiaries of a human rights treaty. Human rights conventions also place an inherent responsibility on the part of the state party as return. Once a country ratifies international human rights conventions, it becomes a State party to the Convention. Accordingly, state parties are bound by the obligations imposed on the State Party by that

treaty. The manner in which these bonds are implemented in a country depends on whether they follow monism or dualism. A country that pursues monist approach is bound by that international law as soon as it ratified a treaty, and a country that follows the dualist approach enacts that responsibility only after the enactment of an enabling legislation that makes it possible. However, despite their dualism, the state party has an unavoidable responsibility as it has demonstrated to the international community its country's intention and commitment by ratifying the Convention. This duty of a State Party, however, mainly applies to the government and its affiliates. Not only that, but every social organization in the country, including non-state actors, is also responsible.

State party obligation may be divided into two main categories at the initial level, such as specific obligation and general obligations. While the general obligation understands under the broad definition given to the Article 2 of the ICESCR the specific obligations discuss under the respect, promote and fulfill.

The general obligation of states to progressively realize the right to food can be find in the Article 2 of the ICESCR as follows.

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures”.

By evaluation main three sub- obligations can be identified as; taking all appropriate steps, achieving progressively the full realization, maximum of its available resources and following the principle of non- Discrimination

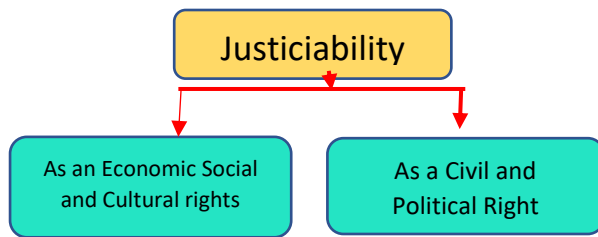
‘Take all appropriate steps’ required state parties to act in a way which help people to enjoy and fulfill their rights mentioned in the ICESCR. The phrase 'progressive to full realization' means that certain steps must be taken immediately in order to fully realize the right to food, while others are taken more gradually. The term ‘maximum of its available resources available’ defines providing a responsibility for states to take steps using their own resources and those of the international community to realize the right to food for the citizen.

In line with the specific obligation the term ‘respect’ requires the State Party to refrain from interfering with the existing level of enjoyment of the rights and to guarantee the existing entitlements. The obligation to ‘protect’ imposes on the authority’s positive duties. It requires the State, by implementing an effective regulatory framework to ensure that individuals or enterprises do not deprive individuals of their human rights. The obligation to ‘fulfil’ basically had main two components (facilitate and provide) and another component (promote) was later added by the General comment 15 of CESCR (Paragraph 25). The duty to ‘facilitate’ means that the State must proactively participate in activities aimed at strengthening the access and the use of resources and means by citizens to ensure their livelihoods, including food security and safety. Where an individual or group is unable, for reasons beyond their control, to enjoy the right to safe food by the means at their disposal, States have a duty to ‘provide’ directly with that right.

D. Intervention strategies to minimize the harm

1) Under the human rights perspective;

To provide the necessary protection, it is vital to allow the justiciability of a human right in a certain jurisdiction. The concept of justiciability always emphasizes an individual's ability to assert a right before a judicial body, which can determine the case and establish the steps to be taken to remedy the violation (Courtis,2008). In nutshell the justiciability contains, individual’s ability to claim the right responsiveness of judges to that claim (Gloppen, 2005), and possibility of having an effective remedy (Gloppen, 2005). As previously stated, the right to eat safe food is inextricably linked to the right to health and the right to food. It is crucial to note, however, that both of these rights have traditionally been classified as non-justiciable rights because they fall under the area of economic, social, and cultural rights. Another way to apply justiciability is to see if there is a chance of claiming this obesity problem under the specific right to life, which is regarded a civil and political right.



The right to safe food and the right to health must be codified and acknowledged within the provisions of the constitution to enable justiciability as a self-standing right. Particularly right to food has been stipulated in few countries like South Africa (Article 27), Brazil (Article 6, amendment 2012) and Mexico (amended 2010). Despite the fact that the initial recognition was adopted to address the issue of having a minimum food intake for persons, with the increasingly broad meaning given to the right to food, it is now implicitly acknowledged that the right to food requires the consumption of quality food. As a result, under the aforesaid provisions, there is a potential of making a claim for the availability of foods that are not healthy for human consumption.

Some countries, such as Sri Lanka, Bangladesh, and Nigeria, have made these rights available within the purview of directive principles of state policies. Even if it appears that the rights are non-justiciable because they are covered by directive principles, judicial interpretations of such directive principles are possible. The Indian Supreme Court, for example, concluded in the case of *Olga Tellis v Bombay Municipal Cooperation* that "the directive principles, albeit not enforceable by any court, are still important in the government of the country."

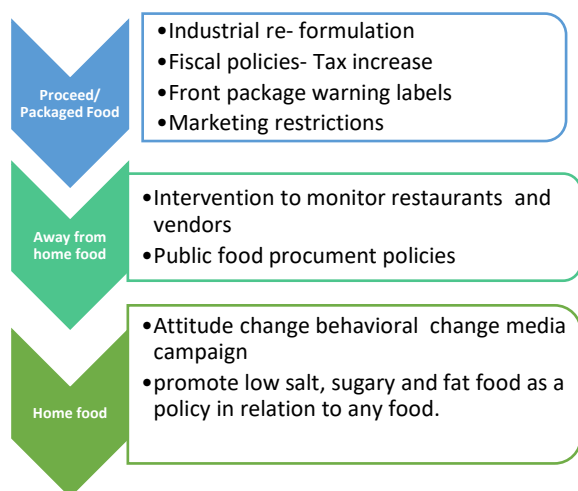
Another strategy to claim justiciability is to support the interpretation with other recognized rights, such as the right to life. There are numerous examples of law created in this manner in various jurisdictions. The Indian Supreme Court declared in the case of *Francis Coralie Mullin v Administrator* that "the right to life encompasses the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as adequate nutrition.". The supreme court of Bangladesh interpreted the right to life provision in the constitution to include the state's obligation to remove threats posed by powdered milk that contain unacceptable amounts of radiation in the case of *Dr. Mohiuddin Farooque V Bangladesh and Others*. The court went on to say that the 'right to life' encompasses the preservation of an average human person's health and natural

longevity, which are being challenged by advertising strategies.' In the case of *G v An Board Uchtala*, an Irish court ruled that "right to life" means "the right to be born, the right to preserve and defend, and the right to have that life preserved and defended, and the right to maintain that life at a proper human standard in matters of food, clothing, and habitation."

Reiterating the link between the consumption of healthy foods and the reduction of obesity, it can be concluded that a case based on the right to life could be successfully argued. The United Nations Human Rights Commission (OHCHER) and the FAO have both stated that under the state party obligation, states must ensure that food put on the market is safe and nutritious, and that states must adhere to food quality standards. One of the other supporting grounds is that the right to consume safe food, or, in other words, that the accessible food must be safe, is also considered a core state party obligation, and that this right to consume safe food is now considered a part of customary international law by the states or closer to obtain it. As stated in the introduction section of this study, a significant number of people die every day around the world as a result of NCDs caused by obesity. This is analogous to the Covid -19 pandemic, where obese people with NCDs account for a larger percentage of mortality.

2) *Effective other actions that can be brought to provide a safe food for individuals;*

While the human rights approach provides a solid conceptual foundation for people's right to obtain good food in order to stay healthy, it is also critical to identify prompt specific actions that can be taken to reduce the harm caused by poor diet. This can also be seen as a way to meet the general state obligation of "taking all steps," which requires states to pass legislation and undertake economic, financial, educational, administrative, and social changes. The following are the steps that can be taken.



In the first instance, industrial re- formulation of foods at the process and packed level is critical to address. It is critical for industry owners to recognize when sugar, salt, and/or fat levels are above the acceptable levels and to re-formulate their products to bring them down to a healthy level. This can be done by setting various goals for each year, and it should be emphasized that while some industries do this on a voluntary basis, in some countries it is mandatory. For example, the United Kingdom uses a voluntary re-formulation technique to address this problem, but Argentina uses a mandatory re-formulation method. Another way states can drive industry reformulation is by allowing fiscal policy and labeling requirements to be used in a way that threatens the industry that produces unhealthy food that exceeds the recommended sugar, salt, and fat levels. Labeling laws, such as a back label, inform consumers that a particular food item contains unhealthy levels of sugar, salt, and/or fat, and thus encourages businesses to re-formulate their products to match the new criteria. Furthermore, permitting the rule that requires them to mention the amount of sugar, salt, and fact in each product is critical. Marketing and advertising are also essential factors in drawing customers, particularly children, to these junk meals, and it is critical that the state regulates the marketing and promotion of foods rich in sugar, salt, and/or fat.

Some countries have used fiscal policy to raise the price of unhealthy foods. Portugal, Mexico, and Hungary are among the few nations that have effectively implemented this high tax on sugary goods and seen a reduction in the volume of sugary food sales. Beyond the industry, these healthy habits must be practiced at both the home away from home food production and the home food production

levels. As a policy, each level of person should support healthy eating over unhealthy foods. It is especially critical to educate society about the health dangers associated with a poor diet, which can lead to obesity and, ultimately, early death. In this context, attitudinal and behavioral change are critical in establishing a healthy eating culture at the grassroots level.

V. CONCLUSION

To summarize, the interpretation of the right to food has progressed to the meaning of the right to safe food, and it is now a well-established fact in the human rights discourse. As a result, the human rights-based approach protected individuals from pursuing initial remedial actions as a result of the state party's delay in taking action. There is a potential of taking action under the right to life if battling against social injustice as an economic, social, and cultural right fails. As a result of the state obligation outlined in section 2 of the ICESCR to take action, there are particular activities that states should take, and everyone as a society has a responsibility to work together to defend our collective health.

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AUTHOR BIOGRAPHY



Ms. M.K. Geethani Jeewanthi obtained her LL.B and LL.M Degrees from the Faculty of Law, University of Colombo and serving as a senior lecturer at the Department of Legal Studies, Open University of Sri Lanka. She has also completed the Post Graduate Diploma in Criminology and Criminal Justice offered by the University of Sri Jayawardhanapura. Currently she is reading for her Mphil/PhD at the Faculty of Graduate Studies, University of Colombo.



Ms. M. D. Kumudunie Kaneshika obtained her BSc. in Physiotherapy Degree from the Faculty of Allied Health Sciences Unit, Colombo University and serving as a Senior Physiotherapist at MJF Charitable Foundation, Moratuwa. She has completed the Post Graduate Diploma in Health Development and Certificate Course in Postgraduate Research offered by the Faculty of Medicine, University of Colombo.