

## Original Research



## A comparative doctrinal analysis of food advertisement laws in Sri Lanka with selected jurisdictions

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### Abstract

**Introduction:** The food industry is an ever-growing industry. Food advertising is its main marketing strategy. The majority of food that advertising the children are exposed to is unhealthy products, thus promoting unhealthy food and beverages and contributing to an increase in the burden of diet-related non-communicable diseases. Therefore, restrictions on unhealthy food advertisements via government regulations are necessary to promote public health.

**Objectives:** To analyse the main food advertisement law in Sri Lanka and compare it to laws relevant to food advertising in other national jurisdictions

**Methods:** A desk review of laws associated with food advertisements in Sri Lanka was conducted, followed by a comparative review of food advertisement laws in nine other national jurisdictions.

**Results:** Sri Lanka does not have a single advertisement law, and most legal provisions on food advertising are merged into labelling regulations. When compared to other jurisdictions, Sri Lankan definition of food advertisement is narrow, and the regulatory regime does not have strict restrictions on the timing of advertising; target Sri Lankan group; type of food advertised; content of advertising; and health messages. The law also lacks a comprehensive suite of enforcement options.

**Conclusions & Recommendations:** Sri Lankan Food Advertising Regulations contain weak restrictions on unhealthy food marketing to children when compared to other jurisdictions globally. It is recommended that the government should publish separate Food (Advertising) Regulations under the Food Act of 1980 which would include provisions on the timing of advertising; target group; type of food advertised; health messages; and enforcement measures such as penalties and warnings, while also revising the existing narrow definition of food advertisement.

**Keywords:** *Food advertisement law, food legislation, Sri Lanka*

## Introduction

Food advertising is a key component of marketing strategies in the food industry (1). Evidence shows that such advertising has a significant influence on the dietary habits and food choices of consumers (2), including children through both traditional and new media technology (3). Food advertisements are prevalent in the advertising landscape globally, representing 16% of all total advertising in Chile (4) and 32.1% in Turkey (5).

Dietary risk factors for non-communicable diseases (NCD) are of growing concern in Sri Lanka (6). Sugar-sweetened beverages are significant sources of high free form of sugar intake in Sri Lankan children (7). Both salt and sugar consumption is high in adults (8), while percentages of alcohol drinkers are 34.8% among men and 0.5% among women (8) in Sri Lanka. Furthermore, 24.6% of men and 34.3% of women are overweight while 3.5% of men and 8.4% of women are obese (8), with unhealthy body weight being a risk factor for cardiovascular disease (9) and cancer (10). The raised blood pressure prevalence is 25.4% for men and 26.7% for women while the percentages are 7.3% and 7.6% for raised blood sugar level, respectively. Among the Sri Lankan population, 19.1% of men and 28.4% of women are having raised total cholesterol levels (8). As seen in the statistical analysis, the unhealthy diets causing a high prevalence of NCDs has been a major public health concern in Sri Lanka.

The majority of food advertisements promote energy-dense, high fat, high sugar and high salt products (11), which are considered as unhealthy foods (8). These promotions contribute to the risk of NCDs. This is particularly a concern in Sri Lanka, with an overall literacy rate of 95.7% and 69% and 79% of households having access to radio and television respectively (12). Thus, the World Health Organisation (WHO) has called on governments to regulate food advertisements (2), which is a strategy already recognized in Sri Lanka (8). Regulation of food advertisements had shown to be effective in reducing the exposure of children and adolescents to these advertisements (13), including promotions for foods high in energy, saturated fats, sugar and sodium (14).

A strong food advertisement law would be a promising step to reduce the NCD burden in Sri Lanka. This warrants an in-depth review of the existing regulations in order to identify their deficiencies for effective future regulatory endeavours.

## Methods

This study analysed the food advertisement laws in Sri Lanka and compared them with contemporary legal developments in the international context. Such comparisons were made in relation to food advertisement laws in Australia, Chile, India, Norway, Portugal, Sweden, Taiwan, and the United Kingdom (UK) to represent the global geographical and economic diversity. For each jurisdiction, the relevant legal instruments were analysed; and scholarly articles and research reports relevant to the operation of these legal instruments were extensively reviewed through the official websites of legal authorities and scientific organizations. The study identified the key type of laws under which food advertisements are regulated in each jurisdiction (e.g., consumer law, media law, etc) and the government authority that administers each law. Key definitions and restrictions contained in food advertising regulation in each jurisdiction were also analysed in relation to the definition of food advertisement, type of food products permitted to be advertised including alcohol and infant formula, age-based restrictions on food marketing, time-based restrictions on broadcast food advertising, restrictions on the messaging or information contained in advertisements and the target of restrictions (e.g., advertisers or broadcasters). Finally, the study identified the penalty regimes created by the relevant laws in each jurisdiction.

## Results and Discussion

### Laws and authorities

Sri Lanka and other comparative jurisdictions have enacted laws to regulate food advertisements in order to protect and promote public health. In Sri Lanka, food advertisements are regulated by several laws.

The main law is the Food (Labelling and Advertisement) Regulations of 2005 (15) made under the Food Act of 1980 (16): the primary enactment. Therefore, the main food advertisement law is coupled with labelling laws without enacting a separate regulation. Most of the provisions in Food (Labelling and Advertisement) Regulations of 2005 are confined to labelling, whilst few provisions are related to advertising. Furthermore, advertising of infant formulas and alcoholic products – which are also types of food regulated under the Sri Lankan Food Act of 1980 – are also regulated by the Consumer Affairs Authority Act of 2003 (17) and National Authority on Tobacco and Alcohol Act of 2006 (18), respectively. Advertising of both infant formulas and alcoholic products are not prohibited under Sri Lankan Food Act of 1980, however in contrast, advertisements of these products are prohibited by Sri Lankan consumer protection and alcohol control legislations, which could be considered a disparity between these laws. Further, the prosecution powers of the National Authority on Tobacco and Alcohol Act of 2006 is vested with both health and excise authorities, while the Consumer Affairs Authority Act of 2003 is administered by consumer authorities. In addition, the authority of regulating alcohol products under the Food Act of 1980 is vested in excise authorities, while the relevant body is the health authority for other food items under the same Act. Therefore, Sri Lanka has neither a single law nor a single authority to regulate food advertisements.

Table 1 summarises the laws related to food advertisements in respective countries under study: Sri Lanka, India (19), Taiwan (20), Australia (21), Norway (22), Turkey (23), Chile (24), Portugal (Portuguese Republic) (25), Sweden (26), and United Kingdom (27).

Sri Lankan and other comparative jurisdictions have not enacted a specifically designated law to regulate food advertisements. Instead, regulations on food advertisements are merged into laws related to labelling, consumer affairs or the media. Further, food advertising provisions are often incorporated into several different laws in one jurisdiction. Therefore, legislatures worldwide have not identified

food advertisement as a distinct legal entity. The presence of several laws relevant to food advertising is particularly confusing to the advertiser. Globally, most food regulations are guided by Codex Alimentarius Standards which are considered as the international food code. The absence of a specific standard for food advertising in Codex Standards may have led to the absence of specific regulation to regulate food advertisements at national levels. However, irrespective of the absence of food business/premise registration standards in Codex Alimentarius, both Sri Lanka and India have enacted specific registration regulations, namely Food (Registration of Premises) Regulation, 2019 (28) and Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 (19), respectively.

In most jurisdictions, as restrictions on food advertising are found in broadcast media regulation, they are mainly administered by media authorities. However, jurisdictions including Sri Lanka, India, Chile, Portugal and Taiwan have food advertising laws administered predominantly by health authorities. Administration of food advertisement laws - which are directly related to health outcomes - by health authorities, is preferred as health officers have expertise in technical matters related to health and understand the gravity of the issue of NCD prevention.

## Definitions

Legal definitions provide the foundation for the smooth and effective operation of any law; therefore, the legal definition of the food advertisement is crucial in food advertisement laws. Most countries define the term 'advertisement' in general but not specifically the food advertisement. On the contrary, Sri Lanka - similar to India and Australia - specifically defines food advertisement. The Sri Lankan (16), Australian New South Wales (NSW) (29) and Indian (19) legal definitions of food advertisements are given in Table 2. The Australian definition is limited to 'food in sale', and as a result excludes food advertisements in charitable events though, no such limitation exists in Sri Lankan and Indian definitions. The Indian

definition is broader because it includes the type of media – print, electronic, internet, website – as well as the nature of print media – notice, circular, label, wrapper or any document. The Sri Lankan and Australian definitions are not similarly descriptive, but overcome this by incorporating broad inclusive phrases, such as 'any representation', 'any means' and 'directly or indirectly'.

When compared to the Sri Lankan as well as the Australian definitions of food advertisement, the Indian definition has two notable omissions – reference to the 'promotion' of a product and 'food'. These omissions have broadened the scope or boundary in identifying a food advertisement in India. In Sri Lanka, it is unclear whether some representations can be defined as a food advertisement due to their 'non-promotional nature'. For example, the promoting purpose is questionable in a print article by an expert on a topic such as health, sport or cooking, which mentions the brand names of food products that he/she consumed (with or without being paid to do so). On the other hand, manufacturers/distributors may convey health or legal messages with the intention to educate the consumer – such as product 'X' is not sold to persons under 21 – without the apparent intention of promoting the sale of products. Furthermore, a food business such as a supermarket may advertise itself with the intention to promote the supermarket itself, while also disclosing available food products. A reasonable person would argue that food is promoted indirectly in all these scenarios irrespective of the advertiser's intention of promoting nature. The Indian definition is strong enough to capture all these indeterminate scenarios as food advertisements due to its broad definition.

Another remarkable omission in the Indian definition – in contrast to the Sri Lankan and Australian definitions – is the term 'food', which is not included in the definition of the food advertisement. Some manufacturers/distributors do advertise without mentioning the type of food, as when food companies promote a brand without mentioning a particular food product. Therefore, Sri Lankan and Australian advertisers could argue that such representations are not 'food advertisements' as per the legal definition.

However, such arguments are not possible under the broad Indian definition.

### Food type

The Sri Lankan Food (Labelling and Advertisement) Regulations of 2005 begin by stating that 'no person shall sell, offer for sale, expose for sale, transport or advertise for sale any food contained in a package or container unless such package is labelled in accordance with these regulations' (15). This provision apparently means that no person shall advertise packaged food which is not labelled accordingly. Therefore, Sri Lankan food advertisement regulations may not be relevant to unpackaged food and properly labelled food due to the ambiguous nature of this provision. On the other hand, the phrase 'advertise for sale' apparently excludes advertisements of food delivered free, i.e., in a charity event.

A majority of food advertisements are for high-calorie, high-fat and high-sugar food rather than for healthy foods (5). Yet, the Sri Lankan Food (Labelling and Advertisement) Regulations of 2005 have not banned any particular type of food from being advertised. Nevertheless, some jurisdictions included in this study restrict the type of food advertised – i.e., unhealthy foods and beverages – with restrictions focusing on protecting children from these advertisements. For example, in Portugal, advertising for foodstuffs and beverages of high energy value, salt content, sugar, saturated fatty acids and processed fatty acids as determined by the Director General for Health, is prohibited from targeting children less than 16 years and in locations such as pre-schools, primary, secondary schools, public playgrounds (25).

The International Code of Marketing of Breast Milk Substitutes recommends ban on advertisements of infant formula (30). However, only four countries included in this study had completely banned advertisements of infant formula under legislation. Advertising infant formula is completely prohibited in Sri Lanka: initially under the Consumer Protection Act of 1979 (31) and then under the Consumer Affairs Authority Act of 2003 (17). Similar status exists in

India (19), the United Kingdom (27) and Taiwan (20). Taiwan's ban is imposed by a specific regulation – Regulations Governing the Management of Infant and Follow-up Formula Advertisement and Sales Promotion of 2014 – which is administered under by Taiwan's health authority (20). Similar to Taiwan, India's ban is also imposed by a specific Act - Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act of 1992 – which is also administered by the health authority (19). However, the Sri Lankan and United Kingdom's laws on infant formula advertisements are administered by non-health authorities.

The WHO recommends the ban of alcohol advertisements (32). In some countries, alcohol advertisements are totally banned; Sri Lanka is among them (18) along with India, Turkey and Norway (33). However, in other jurisdictions, alcohol advertisements are restricted based on different criteria. In the United Kingdom (27) and Chile (33), alcohol advertisements are prohibited if they target children below 18 years of age. Additionally, Chilean alcohol advertisements may not be broadcast between 6.00-10.00 p.m. (33). In Portugal (33) and Australia (34), alcohol advertisements are allowed under restrictions related to media, timing of broadcast on television, location and events, while Sweden alcohol advertisements are restricted based on alcohol concentration and the display of a warning messages (33). Therefore, the Sri Lankan law on alcohol advertisements due to its absolute ban on these advertisements is stronger, so as to promote public health.

### Age restriction

The content of food marketing directed at children is predominately for unhealthy foods (35) and the promotion of unhealthy products to children is a key marketing strategy used by food companies (11). For example, one study found that confectionery advertisements were three times as likely, and fast-food restaurant advertisements twice as likely, to be broadcasted during children's programs than in adults' programs (36). Sri Lanka is one of the countries with minimum age restrictions on food advertisements,

but such limitations only exist in respect of infants (less than 1 year of age), as infant formula advertisements are prohibited.

Other jurisdictions included in this study had enacted more stringent legal provisions to protect children from being targeted by food advertisements, although the age limit varies. Portugal has prohibited unhealthy food advertisements targeted at children under 16 years old. Furthermore, this restriction is applied, not only during television and radio programs, but also in the 30 minutes before and after such programs; in print media; theatres; the internet; and social media. Additionally, the country has prohibited advertisements of unhealthy food - foodstuffs and drinks with a high energy value, salt content, sugar, saturated fatty acids and processed fatty acids - in pre-schools, primary and secondary schools. Further, no food advertisements are permitted to be displayed in sports, cultural and recreational activities organized by pre-school, primary and secondary schools (25). Chile has banned unhealthy food advertisements targeted to children below 14 years old whilst prohibiting offering incentives such as toys, gifts, accessories, games and stickers (24). Advertisements for slimming or weight control products or services targeted children under 18 and infant formula are prohibited in United Kingdom. Also, unhealthy foods and beverages may not be advertised in television programs that particularly target children under the age of 16 years, and certain content (e.g. licensed characters and celebrities popular with children) is banned in unhealthy food advertisements targeted to primary school aged children (27).

The age limit applied to restrict all food advertisements is 12 in Sweden (26). In Norway, no food advertisement of any kind should target children. In addition, no food advertisement should be broadcasted during children's programmes as well as 10 minutes before and after a children's programme (22). In India, all forms of promotion of foods marketed to children up to two years of age – including infant formula – are prohibited (19). Australia has barred certain promotions and endorsements in advertising during designated viewing times for children (aged less than 14 years) in free to air broadcasts (21). Therefore, unlike in Sri

Lanka, most of the countries had tried to protect children's health by regulating food advertisements targeted at children. This difference in age limit between countries is likely to be based on legal definitions of the 'age' of children as well as research demonstrating that children develop a critical understanding of advertising only from around 11 years of age (37).

### Time restriction

Food is a key commodity that is commonly advertised in peak viewing times on broadcast media. On weekdays, 6.00-9.00 p.m. is the time slot most commonly used for advertising food followed by early morning on Sunday (38). In another study, the time period between 4.00-8.00 p.m. is the time period with the highest concentration of food advertising and is higher during this slot on weekends over weekdays (5). Sri Lanka does not have time restrictions on food advertisements. Australian law restricts all food advertisements in free-to-air televisions during children's television programs which are broadcast mostly between 4.00-5.00 p.m. (39). As mentioned, above, Chilean alcohol advertisements are prohibited from being broadcast between 6.00-10.00 p.m. (33). Australia (33) and Portugal (33) also restrict the broadcast of alcohol advertisements on television at particular times of the day. Unlike in Sri Lanka, the absence of time restrictions does not matter in most other countries as they have restricted food advertisements targeted at children, including in broadcast media.

### Content

Certain contents in food advertisements are completely prohibited in Sri Lanka while some are allowed under conditions. Sri Lanka has prohibited misleading and deceptive messages in food advertisements and claims such as that particular food may offer cure for illness, an aid for slimming, weight control, or weight reduction, protection from heart diseases, etc. (15).

In Portugal, advertisements of foodstuff and beverages of high energy value, salt content, sugar,

saturated fatty acids and processed fatty acids should not encourage excessive consumption; underestimate non-consumers; create a sense of urgency or urgent need to consume; associate the consumption of the product with the acquisition of status, social success, special skills, popularity, success or intelligence; and communicate consumption as beneficial to health, while omitting the harmful effects of high levels of consumption (25). India (19) has prohibited the promotion of unhealthy lifestyles through food advertisements. Moreover, in Chilean (24) law, all food advertisements made through mass media should have a health message determined by the health authorities. All these provisions contribute to either encourage healthy dietary patterns or discourage unhealthy dietary patterns.

### Legal responsibility

Sri Lankan law neither defines the manufacturer /distributor, advertising agency and media service provider nor explicitly stipulates their legal role in relation to advertising restrictions. Instead, the act is worded as - "no person shall advertise..." (15). This wording is imprecise and does not make clear whether it refers to the manufacturer/distributor, advertising agency or media service provider. However, a defence has been offered as - "it shall be defence for the accused if he received the advertisement for publication in the ordinary course of business and had no reason to believe that an offence would be committed" (16), which indirectly refers to the media service provider. The legal responsible body to whom the restrictions apply for the advertisement is not precisely defined in most other jurisdictions too. Nevertheless, India has tried to specify to whom the restrictions apply by stipulating that they apply to the "food business operator" and "marketer" (19) while the "marketer" is defined as persons or companies, including advertisers, and direct marketers, including e-platforms who or on whose behalf marketing communications are published for the purpose of promoting their products or influencing consumer behaviour.

The ability to identify and trace the entity responsible for creating an advertisement is essential for the

effective operation of legal interventions. This ability is not explicitly stipulated in the Sri Lankan food advertisement law even though, some jurisdictions have considered it. Taiwan media service providers have to maintain particulars on their clients for six months from the date of publishing the advertisement (20), while it is up to two months after the transmission in Norway (22). Turkey's media service providers are to retain the recordings of advertisements for one year (23).

### Penalty and warning

The penalty for breaching Sri Lankan food legislation can be either judicial or administrative in nature. The Sri Lankan Food Act of 1980 imposes a fine and imprisonment for offenses which are injurious to public health (16); therefore, this penalty (with compulsory imprisonment) could apply for any

violation of advertising provisions. On the other hand, the Chief Food Authority of Sri Lanka (which is the Director General of Health Services) who is responsible to ensure the implementation of the act, after giving the opportunity of being heard, can prohibit any advertisement which is false, misleading, deceptive or creates an erroneous impression (40). However, in Sri Lanka, no mechanism is provided for warnings or notices. In contrast, in addition to fines or imprisonment, jurisdiction like Norway (22) and Turkey (23) enable warnings to be given by authorities. It is interesting that Taiwanese authorities can order advertisers to publish or broadcast a specific number of corrective advertisements in the same size and time period of the original defective advertisement (20). Having multiple sanctions available would invariably improve the efficiency of implementing the law.

**Table 1: Advertisement laws in respective countries**

| Country        | Laws  |
|----------------|---|
| Sri Lanka      | Food Act of 1980<br>Consumer Affairs Authority Act of 2003<br>National Authority on Tobacco and Alcohol Act of 2006<br>Food (Labelling and Advertising) Regulations, 2005                         |
| India          | Food Safety and Standards (Advertising and Claims) Regulations, 2018<br>Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act of 1992 |
| Taiwan         | Act Governing Food Safety and Sanitation of 1975  |
| Australia      | Federal Broadcasting Services Act of 1992<br>Children's Television Standards of 2009<br>Federal Competition and Consumer Act of 2010<br>State and Territory Fair Trading Acts                     |
| Norway         | Broadcasting Act of 1992  |
| Turkey         | Law No.6112 on the Establishment of Radio and Television Enterprises and Their Media Services of 2011   |
| Chile          | Law no. 20,606 on the Nutrient Composition of Food and its Advertising of 2012  |
| Portugal       | Law no 30/2019 (24)   |
| Sweden         | Radio and Television Act of 2010  |
| United Kingdom | Code of Broadcast Advertisement to regulate food advertisements   |

**Table 2: Definition of food advertisement**

|           |  |
|-----------|--|
| Sri Lanka | Any representation by any means whatsoever for the purpose of promoting directly or indirectly the sale or disposal of any food  |
| NSW       | Any words, whether written or spoken, or any pictorial representation or design, or any other representation by any means at all, used or apparently used to promote, directly or indirectly, the sale of food                           |
| India     | Any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website and includes through any notice, circular, label, wrapper, or other documents |

## Conclusion & Recommendations

Sri Lanka does not have a single specific law to regulate food advertisements because provisions on food advertisements are merged with labelling and consumer laws. Therefore, it is recommended that the government should publish a separate Food (Advertising) Regulations under the Food Act of 1980, covering all relevant aspects of food advertising, including infant formula and alcohol advertisements.

The current Sri Lankan legal definition of food advertisements has failed to cover a wide range of food related advertisements. Thus, it is suggested that new amendments contain a revised definition that includes food businesses, non-promotional food advertisements and the type of media that advertisements are published in or broadcast on. Further, the terms advertising and advertiser should be defined in addition to specifying the responsible body for violations and granting food authorities a wide range of enforcement powers.

Sri Lankan advertising regulations only regulate the information or the content of the advertisement in addition to the prohibition of infant formula and alcohol product advertisements. More provisions need to be added to restrict the advertising of unhealthy food such as high salt, high fat and high sugar foods; and advertisements for these products targeting children. The inclusion of a mandatory health message in advertisements for unhealthy foods and beverages, which is approved by the

Health Ministry, would also improve healthy food consumption among Sri Lankans.

There are few penalties available for violation of the Sri Lankan law, including prohibition of the advertisement by the Chief Food Authority; a fine or imprisonment ordered by the courts. However, a greater range of administrative sanctions, including warnings issued by the Food Authority, fines and orders to re-advertise the corrected advertisement, could be imposed to enforce implement regulation without complex, expensive and time-consuming court procedures.

### Public Health Implications

Food advertisements can promote unhealthy food specifically to children if not strictly regulated by the law. High consumption of unhealthy foods is a risk factor for the development of NCDs, which is a major public health burden in Sri Lanka. When compared to Sri Lanka, most other countries included in this study had introduced stringent laws to regulate food advertisements. It is a timely need to analysis the limitations of Sri Lankan food advertisement laws and to explore what Sri Lanka could learn from other countries in regulating food advertisements. Other countries' approaches could be drawn up to amend Sri Lankan food advertisement laws effectively in future.

## Author Declarations

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