

JUNK FOOD LURKING IN SCHOOLS & COLLEGES: NEED TO BE BANNED *

INTRODUCTION:

The right to life is guaranteed in any civilized society that would take within its sweep the right to food.¹ The protection of life assured under Article 21 has given an expanded meaning of the right to life.² It is settled law that all the related provisions under the Constitution must be read together and given the meaning of widest amplitude to cover the variety of rights which go to constitute the meaningful right to life.³ Article 21 of the Constitution envisages a right to life and personal liberty of a person. The word "Life" under Article 21 means a quality of life,⁴ which includes right to food, and reasonable accommodation to live in⁵ and the right to a wholesome environment.⁶

Junk food has high level of fat and sugar that are not only unhealthy but addictive and that creates a vicious cycle making it hard for children to choose healthy food.⁷ Junk food intake leads to higher proportion of calories being derived from total and saturated fat.⁸ Likewise, the carotene, vitamin A, vitamin C which is the micronutrient content present in junk food is also low.

RIGHT TO HEALTHY FOOD IS A FUNDAMENTAL RIGHT UNDER ARTICLE 21 OF THE INDIAN CONSTITUTION:

Right to healthy food is included within right to food in Article 21 of the Constitution of India.⁹ The fundamental right to life, as stated in Article 21 of the Constitution of India guarantees to the individual her/his life or personal liberty except by a procedure established by law.¹⁰ The right to life with human dignity, enshrined in Article 21, is derived from the Directive

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¹ Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520 at 527, p.9

² Chameli Singh & Ors v. State of U.P. and Anr (1996) 2 SCC 549

³ P.G. Gupta v. State of Gujarat (1995) 2 SCC 182 at 184, p.1

⁴ Francis Coralie v. Union Territory of Delhi, AIR 1994 SC 1844

⁵ Supra Note 1

⁶ Charan Lal Sahu v. Union of India, AIR 1990 SC 1480

⁷ Asgary S, Nazari B, Sarrafzadegan N, Parkhideh S, Saberi S, Esmailzadeh A, et al. "Evaluation of fatty acid content of some Iranian fast foods with emphasis on trans fatty acids." Asia Pac J Clin Nutr 2009; 18: 187-92 (Source: Source: Jaya Shankar Kaushik, Manish Narang and Ankit Parakh "Fast Food Consumption in Children" From the Department of Pediatrics, University College of Medical Sciences & Guru Teg Bahadur Hospital; and Kalawati Saran Children Hospital, Delhi, India. <http://medind.nic.in/ibv/t11/i2/ibvt11i2p97.pdf>)

⁸ Schmidt M, Affenito SG, Streigl-Moore R, Khoury PR, Barton B, Crawford P, et al. "Fast food intake and diet quality in black and white girl's" Arch Pediatric Adolescent Med. 2005;159:626-31. 15. (Source: Ibid)

⁹ Dena Nath v. National Fertilizers Ltd. (1992) 1 SCC 695

¹⁰ Constitution of India

Principles of State Policy and therefore, includes protection to health.¹¹ “Maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and on the betterment of these depends on the building of the society of which the Constitution makers envisaged. Attending to public health, therefore is of high priority perhaps the one at the top”.¹² Right to life includes the right to live with basic human dignity with the necessities of life such as nutrition, clothing, food, and shelter over the head, facilities for cultural and socio-economic well-being of every individual.¹³ Article 21 protects the right to life. It guarantees and derives there from the minimum needs for existence, including a better tomorrow.¹⁴

The study by Deborah Clegg from the University of Texas at Southwestern, published in 2009 in *The Journal of Clinical Investigation*, showed that the fat from fatty acids affects the brain. The study suggested that when we eat something high in fat, the brain gets ‘hit’ with the fatty acids, and the fat molecules cause the brain to send messages to the body’s cells, warning them to ignore the appetite suppressing signals from leptin and insulin, hormones that are involved in weight regulation. Since the body does not get the signal that it is satiated it leads to over eating.¹⁵ In India, obesity has become an epidemic. A study by the Organization for Economic Cooperation and Development (OECD), published in *Lancet* in November 2010, looked at the burden of overweight citizens in six countries- Brazil, China, India, Mexico, Russia and South Africa. It found that between 1998 and 2005, India’s overweight rates (where the Body Mass Index or BMI is greater than 25 kg/m² and less than 29.9 kg/m²) increased by 20 per cent.¹⁶ Obesity is a growing and serious concern in both industrialized countries and the developing world. Data from a subset of 10 developing countries show that the percentage of girls aged 15-19 who are overweight (i.e., those with a body mass index above 25.0) ranges between 21 and 36 per cent.¹⁷

RIGHT TO HEALTHY FOOD IS VIOLATED:

In a move towards the fast changing life style it is becoming more dangerous, as childhood obesity is on the rise. A study published in science journal *PLOS* in February 2011, which examined the prevalence of overweight and obesity among urban Indian adolescents in New Delhi, has shown that while one in five adults is obese, about 20 per cent of children are either already obese or overweight.¹⁸ Like obesity, diabetes too has acquired epidemic proportions in the country. In India, the prevalence of diabetes increased from 8.3 per cent in 1989 to 11.6 per cent in 1995 to 18.6 per cent in 2006. This marked an increase of over 70 per cent.¹⁹ Unhealthy diet leads to metabolic changes and conditions such as becoming overweight, high blood pressure, and raised blood glucose and cholesterol, which are among the leading causes of

¹¹Bandhua Mukti Morcha v. Union of India AIR 1984 SC 802

¹²Vincent Panikulangara v. Union of India AIR 1987 SC 990

¹³Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981)1 SCC 608 at 618, ¶ 17

¹⁴Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India, (1992) 2 SCC 343 (388)

¹⁵Deborah Clegg, *The Journal of Clinical Investigation* , Published in Volume 119, Issue 9 (September 1, 2009) Available at <http://www.jci.org/articles/view/36714/version/2> (Last Visited on 10th February 2015)

¹⁶Cecchini M et al. “*Tackling of unhealthy diets, physical inactivity, and obesity: health effects and cost-effectiveness.*” *Lancet*, Nov 2010 (Food Safety Watch - Centre for Science and Environment www.cseindia.org/userfiles/Factsheet-Junk_food.pdf) (Last Visited on 11th February 2015)

¹⁷David Anthony, Chris Brazier et al., *The State of World Children*, 2011.

¹⁸“Deepak Kumar Gupta” et al. “*Secular Trends in Prevalence of Overweight and Obesity from 2006 to 2009 in Urban Asian Indian Adolescents*” Aged 14-17 Years. *PLOS One*, 2011 (published online 2011 February 23) (Source: “*Food Safety Watch*” Centre for Science and Environment, New Delhi, http://www.cseindia.org/userfiles/Factsheet-Junk_food.pdf)

¹⁹Ibid

NCD deaths in India.²⁰ Studies have established the link between consumption of junk food and obesity. Hypertension is strongly associated with high BMI and salt intake. A cross-sectional study²¹ among 400 school children in Chennai found that the total prevalence of hypertension was 21.5 per cent. Several other studies done in India suggest high prevalence of hypertension in overweight and obese children compared to children whose weight is normal.²²

CHILDREN EXPLOITED BY THE TV ADVERTS, PROMOTING UNHEALTHY FOOD:

Reasons for wide spread consumption of junk food can be made out from bribing children with toys to convincing them to eat a “fourth meal,” the industry is glutted with perverse, profit-chasing schemes. Research has found strong associations between increase in advertising for non-nutritious foods and rates of childhood obesity. According to the American Academy of Pediatrics (AAP), the average child watches about four hours of television a day and sees more than 20,000 commercials each year, often for high-fat, high-sugar and high-salt snacks and foods. By the time American children finish high school, they have spent nearly twice as many hours in front of the television set as in the classroom.²³ Advertisement is one of the effective tools of integrated marketing communication to emotionally motivate consumers to buy the products.²⁴ Content analyses of food advertisements reveal that most television ads are for food items of minimal nutritional value.²⁵ Advertisements featuring products like snacks, toys, confectionaries, cookies and fast food are specifically targeted at children, in order to motivate them to try new brands and buy more.²⁶

STATE’S PARAMOUNT DUTY TO PROTECT THE HEALTH OF CHILDREN:

²⁰World Health Organization, 2010, “*Global status report on non-communicable diseases*” http://whqlibdoc.who.int/publications/2011/9789240686458_eng.pdf (Source: “*Junk Food Targeted at Children Regulatory action required to limit exposure and availability*” Centre for Science and Environment, http://www.cseindia.org/userfiles/junk_food_targeted_children.pdf (Last Visited on 12th February 2015)

²¹Jasmine S Sundar et al. “*Prevalence and determinants of hypertension among urban school children in the age group of 13-17 years in Chennai, Tamil Nadu*”, “*IOSR Journal of Dental and Medical Sciences*” (IOSR-JDMS) e-ISSN: 2279-0853, p-ISSN: 2279-0861, Volume 8, Issue 3. (published in *Epidemiology* in 2013) (Source: *Junk Food Targeted At Children, Regulatory action required to limit exposure and availability*, Centre for Science and Environment, http://www.cseindia.org/userfiles/junk_food_targeted_children.pdf) (Last Visited on 13th February 2015)

²²Ibid

²³Jane E. Brody “*Personal Health; TV’s Toll on Young Minds and Bodies*” The New York Times, 3rd August 2004 <http://www.nytimes.com/2004/08/03/health/personal-health-tv-s-toll-on-young-minds-and-bodies.html> (Last Visited on 15th February 2015)

²⁴S.E Moore, “Children and changing world of advertisement”, *Journal of Business Ethics* vol. 52, p 161-167 (Source: Zain-Ul-Abideen “*Effective advertising and its influence on consumer buying behavior*,” *European Journal of Business and Management* ISSN 2222-1905 (Paper) ISSN 2222-2839 (Online) Vol. 3, No.3 <http://www.iiste.org/Journals/index.php/EJBM/article/download/268/152> (Last Visited on 17th February 2015)

²⁵C. Byrd-Bredbener C, D. Graso, “*What is television trying to make children swallow? Content analysis of the nutrition information in prime-time advertisements*”, *J Nutr Educ.* vol. 32, p 187-195, 200; S.C. Folta, J.P. Goldberg, C. Economos, R. Bel, R. Meltzer (2006). “*Food advertising targeted at school-age children: A content analysis*”, *J Nutr Educ Behav.* vol. 38, p 24-248, 206 (Source: Anna M. Adachi-Mejia, “*Adolescent weight status and receptivity to food TV advertisements*,” <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3175307/> (Last Visited on 16th February 2015)

²⁶B.J. Blosler and D.F Roberts “*Age differences in children’s perception of message intent – Response to T.V. news, commercials, educational spots and public service announcements*” *Communications Research* vol. 12 (4) p 45-64, 1985; D. Halan, “*Advertisements and children*”, *Ad Express*, ICFAI Press, Hyderabad, 203, June, 21, p 4 (Source: T. Vijayapushpam, *A Comparative Analysis of Television Food Advertisements Aimed at Adults and Children in India*, (IJIRSE) *International Journal of Innovative Research in Science & Engineering* ISSN (Online) 2347-3207 <http://ijirse.in/docs/June14/IJIRSE140606.pdf>)

State is not fulfilling its obligations as per the directives of the Constitution of India because any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the government and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.²⁷ In United Kingdom and many European countries, all commercial activities in primary schools are restricted as per the directive of Union of European Beverages Association (UNESDA). According to these, secondary school students may be offered full range of beverages including water, 100% juice, sports drink, and low calorie drinks in different portion sizes in active participation with educators and parents.²⁸ Health education and school based intervention programs can improve the dietary pattern of children.²⁹ Child of today cannot develop to be a responsible and productive member of tomorrow's society unless an environment which is conducive to his social and physical health is assured to him. If the children are better equipped with a broader human output, the society will feel happy with them. Neglecting the children means loss to the society as a whole.³⁰

Food must be *available, accessible* and *adequate*: The right to adequate food is NOT the same as the right to safe food. The right to adequate food is more than the right to safe food. The right to adequate food is sometimes understood as referring to the standards for the food that is available on the market, which should be safe. This is too narrow. The right to food requires adequate food to be available and accessible. Adequacy refers to quantity, quality and appropriateness, taking into account cultural aspects as well as the physiology of the individual (e.g., sex, age and health).³¹

According to Jeremy Bentham who shares this vision of the proper function of social institutions like law and morality may differ on more than the best methods to attain it, as Aristotle noted, there is widespread agreement that happiness is the goal, but considerable disagreement as to what constitutes happiness. For Bentham the answer is simple: happiness is just pleasure and absence of pain. The value or disvalue of a pleasure or pain depends only on its intensity and duration, and can at least in principle be quantified precisely.³² Bentham detected a serious and potentially debilitating defect in rendering the utility principle as the "greatest happiness of the greatest number". The less the numerical difference between the minority and majority, the more obvious the deficiency in aggregate happiness will be logically, then, the closer we approximate the happiness of all the members of the community, the greater the aggregate of happiness.³³

Subsequently when it comes to junk food, the relation with it and Bentham doctrine of Pain & Pleasure is quite similar. This can be shown by the fact that the two dimension of the dogma,

²⁷Centre for Public Interest Litigation v. UOI &Ors, AIR 2014 SC 49

²⁸Union of European Beverages Association, "Our UNESDA commitments to act responsibly" Available at: <http://nachhaltigkeitsbericht.coca-cola.de/download/unesda-selbstverpflichtung.pdf> (Last Visited on 14thFebruary 2015)

²⁹French SA Pricing effect on food choices J Nutr 2003; 133:841 (Source: Jaya Shankar Kaushik, Manish Narang and Ankit Parakh "Fast Food Consumption in Children" From the Department of Pediatrics, University College of Medical Sciences & Guru Teg Bahadur Hospital; <http://www.indianpediatrics.net/feb2011/feb-97-101.htm>) (Last Visited on 14thFebruary 2015)

³⁰Bandhua Mukti Morcha v. Union Of India &Ors AIR 1984 SC 802

³¹General comment 12 (1999) on the right to adequate food, adopted by the committee on Economic Social and Cultural Rights(ICESCR)

³²Jeremy Bentham, "Utilitarian Philosophy" <http://utilitarianphilosophy.com/definition.eng.html>, (Last Visited on 16th May, 2015)

³³Jeremy Bentham, "Greatest Happiness Principle" <http://plato.stanford.edu/entries/bentham/> (Last visited on 19th May 2015)

i.e., of Pain and Pleasure play active role in benefiting and harming respectively. As prima facie it can be seen that on one hand if we talk about pain the junk food impact the human body with proliferated diseases like obesity and various other cardio vascular diseases. Although it is accounted in edible food supplements but it in other sense gradually harms the organs or human body at large. Whereas on the other hand, taking pleasure in the realm of junk food- it provides reinforcement to demand of general public at large which favors this particular by their happy taste-buds. Viewing both of these aspects it could infer by balancing that society would favor averting pain rather than gaining pleasure. Bentham statement of greatest happiness to greater number here can be seen not in context of consumption of junk food at large but as making laws or enactment which curtails the excessive supply of junk food that is spoiling the society beauty or human resource at large.

RIGHT TO FOOD APPLIES SPECIFICALLY TO CHILDREN:

Children are especially vulnerable to a lack of adequate food, as they need nutritious and safe food to grow physically and mentally. Around half the deaths of children below five years of age are caused by under nutrition. Malnutrition is caused by a combination of factors such as lack of adequate food and health care and unsafe water and sanitation. Much of the debate in India has centered on the question of whether there have in fact been large numbers of starvation deaths. In fact, most deaths associated with malnutrition are due to a combination of malnutrition and disease. The immediate, final cause of death, the phrase written on the death certificate, is usually some disease, often an infectious disease, rather than starvation or hunger as such. UNICEF estimates that in the year 2000, about 2,420,000 children in India died before their fifth birthdays. This was the highest total for any country. It was estimated that for the same year about 10,929,000 children died before their fifth birthdays. Thus, more than a fifth of the child mortality worldwide occurs in India alone. Thus we can estimate that more than a million children die in India each year from causes associated with malnutrition.³⁴

INTERNATIONAL CONVENTIONS EXPLICITLY RECOGNISES RIGHT TO HEALTHY FOOD:

There are various provisions and conventions present at international arena which recognizes right to healthy food as international human rights law. The UDHR recognizes, in the context of an adequate standard of living.³⁵ The ICESCR, which is part of the International Bill of Human Rights, recognizes the right to adequate food as an essential part of the right to an adequate standard of living.³⁶ The right to food is also recognized in other international conventions protecting specific groups, as in CEDAW.³⁷ Convention on the Rights of Persons with Disabilities, 2006,³⁸ Convention on the Rights of the Child, 1989³⁹ addresses the issue of nutrition. A series of expert consultations, conferences, and studies steadily clarified the meaning of the human right to food. This statement by the committee constitutes a definitive contribution to international jurisprudence.⁴⁰

Right to health is violated as per the International provisions. Obesity is no longer just a problem of wealthy industrialized nations. It is now on the rise in developing countries, crossing urban and rural areas, affecting adults and children alike. The WHO reports that NCDs are one of the leading causes of deaths worldwide. In 2008, over 80 per cent of global

³⁴United Nations Children's Fund, *The State of the World's Children* (New York: UNICEF, 2002) <http://www.unicef.org/sowc02summary/table1.html> (Last Visited on 28th January 2015)

³⁵Article 25 (1) of The Universal Declaration of Human Rights, 1948

³⁶Article 11 (1) The International Covenant on Economic, Social and Cultural Rights, 1966

³⁷Article 12(2) of the Convention on the Elimination of All Form of Discrimination against Women, 1979

³⁸Article 28 (1) of the Convention on the rights of Persons with Disabilities, 2006

³⁹Article 24 and Article 27 of Convention on the Rights of the Child, 1989

⁴⁰The UN's Committee on Economic, Social and Cultural Rights of its *General Comment 12*

deaths due to CVD and diabetes occurred in low and middle-income countries. NCDs also kill at a younger age in these countries, where 29 per cent of NCD deaths occur among people under the age of 60, compared to 13 per cent in high-income countries.⁴¹ In India, as of 2008, about 53 per cent of all deaths were due to NCDs. The disease burden of NCDs is expected to reach to 57 per cent by 2020 as compared to 29 per cent in 1990.⁴² As of 2010, approximately 43 million children under five years of age were overweight or obese worldwide, and more than 80% of these children live in developing countries.⁴³ Childhood obesity is one of the most serious public health challenges of the 21st century. As per the WHO, about 44 per cent of the diabetes burden and 23 per cent of the CVD burden is attributable to overweight and obesity. Overweight children are more likely than non-overweight children to develop insulin resistance, hyper insulinemia, diabetes and CVD at a younger age, which in turn are associated with a higher chance of premature death and disability.⁴⁴

A 2010 analysis found that of 3,039 possible kids' meal combinations available at large fast food chains, only 12 combinations met the nutrition criteria for preschoolers and just 15 for older children.⁴⁵ If obesity trends continue through 2020 without other changes in behavior or medical technology, the proportion of individuals reporting fair or poor health would increase by about 12% for men and 14% for women over 2000 rates.⁴⁶ Diseases related to poor diet and inactivity includes: obesity, high blood pressure, diabetes, coronary heart disease, osteoporosis, cancer, and stroke.⁴⁷ Overweight children face a greater risk of developing lung disease, diabetes, asthma, and cancer.⁴⁸

Nations worldwide are grappling with the issue of junk food marketing to children, and many countries have established policies to limit children's exposure to marketing. The World Health Organization's (WHO) Global Strategy on Diet, Physical Activity and Health discourages messages that promote less healthful dietary practices and encourages positive healthful messages in food and beverage advertisements aimed at children.⁴⁹ In 2006, WHO called for national action to protect children from marketing by substantially reducing the volume and impact of the commercial promotion of junk food.⁵⁰

JUNK FOOD – AN UNHEALTHY FOOD:

Junk Food is defined as “any food, which is low in essential nutrients and high in everything else—in particular calories and sodium. Junk foods contain little or no proteins, vitamins or

⁴¹World Health Organization 2011, NCD Country Profiles, http://www.who.int/nmh/countries/ind_en.pdf Last (Visited on 27th February 2015)

⁴²Ibid

⁴³World Health Organization “*Obesity and overweight: Fact sheet No. 311*” Retrieved from <http://www.who.int/mediacentre/factsheets/fs311/en/index.html>(Last Visited on 17th February 2015)

⁴⁴“Childhood obesity and adult morbidities”, *Am J Clin Nutr* 2010; 91(suppl):1499S-1505S, <http://ajcn.nutrition.org/content/91/5/1499.Sfull.pdf> (Last Visited on 10th February 2015)

⁴⁵Yale University's Rudd Centre for Food Policy and Obesity, 2010 <http://www.yaleruddcenter.org/newsletter/issue.aspx?id=271> (Last Visited on 26th Feb 2015)

⁴⁶ RAND, “*Obesity and Disability: The Shape of Things to Come*” (2004), Available at: <http://www.rand.org/publications/RB/RB9043/RB9043.pdf> (Last Visited on 1st February 2015)

⁴⁷Ibid.

⁴⁸ World Health Organization, “Non communicable diseases”, January 2015. Available At: <http://www.who.int/mediacentre/factsheets/fs355/en/> (Last visited on 17th March 2015)

⁴⁹World Health Organization “*Global Strategy on Diet, Physical Activity, and Health*” Geneva: WHO, 2004. Report WHA57.17. Available at: http://www.who.int/gb/ebwha/pdf_files/WHA57/A57_R17-en.pdf(Last Visited 10th February, 2015).

⁵⁰World Health Organization Marketing of Food and Non-Alcoholic Beverages to Children: Report of a WHO Forum and Technical Meeting. Geneva: WHO, 2006. [Online] Available: <http://www.who.int/dietphysicalactivity/publications/Oslo%20meeting%20layout%2027%20NOVEMBER.pdf> (Last Visited on 12th February 2015)

minerals but are rich in salt, sugar, fats and are high in energy (calories). Highly salted like chips, high in refined carbohydrates (empty calories) like candy, soft drinks and high in saturated fats like cake and chocolates.”⁵¹

GROWTH OF FAST FOOD INDUSTRIES:

According to the National Restaurant Association of India (NRAI) 2010 report, the fast food industry in India is currently estimated to be between Rupees 6750- Rupees 8000 crore, growing at a compound annual growth rate of 35-40 per cent. It was found that across the seven states in which it conducted its study, in urban and rural areas, there was a growing and substantial percentage of people eating fast food.⁵² A recent study by AIIMS reveals startling details about school students' health. It has found 23.1 per cent boys to be overweight and girls are 27.7 per cent, while 8.3 per cent fall into the obese category. The fat epidemic has mainly been attributed to junk food.⁵³ A new AIIMS study on 10,000 Delhi school children has found that 3-4% of them suffered from hypertension, the most common cause of heart-related deaths. Among these were children as young as five years old.⁵⁴ The Rupees 8000-crore junk food industry in India is fuelling a host of health disorders such as obesity, diabetes and hypertension amongst urban adolescents is one of the facts which came out of a the Round Table meeting organized by Centre for Science and Environment here today.⁵⁵ The second largest contributor to mortality rates in the United States [after “tobacco use”] is obesity.⁵⁶ It is associated with increased incidence of diabetes, hypertension, and coronary artery disease, and it represents a public health problem that is rapidly growing worse.⁵⁷

PRESENCE OF UNFAVOURABLE NUTRIENTS AND CHEMICAL ADDITIVES:

High levels of TFA are a public health concern due to some evidence associating TFA with coronary heart disease.⁵⁸ Trans-fat is the common name for a type of unsaturated fat. A high intake of trans fatty acids (TFAs), all types of isomers, is associated with the risk of non-communicable diseases such as coronary heart disease and the metabolic syndrome.⁵⁹ The FSSAI pronounces products free of Trans-fats if they have less than 0.2 grams of trans-fats per serving. A recent report by the Centre for Science and Environment had accused many brands of labeling their products Trans-fat-free even though they contained it in large amounts. Trans-

⁵¹Dietary Guidelines for Indians, 2011, National Institute of Nutrition (NIN), <http://ninindia.org/DietaryguidelinesforIndians-Finaldraft.pdf> (Last Visited on 23rd February 2015)

⁵²CSE, 2011 Food Safety Watch, Centre for Science and Environment, New Delhi, Available at: http://www.cseindia.org/userfiles/Factsheet-Junk_food.pdf (Last Visited on 13th February 2015)

⁵³Junk diet, Down to Earth, 15th February, 2003 Available at: <http://www.downtoearth.org.in/node/12477http://ninindia.org/DietaryguidelinesforIndians-Finaldraft.pdf> (Last Visited on 24th February 2015)

⁵⁴Durgesh Nandan Jha, “AIIMS study finds 4% of Delhi kids have high BP,” Times of India, TNN, Oct 19, 2013, Available at: <http://timesofindia.indiatimes.com/city/delhi/AIIMS-study-finds-4-of-Delhi-kids-have-high-BP/articleshow/24355619.cms> (Last Visited on 24th February 2015)

⁵⁵<http://www.cseindia.org/content/take-junk-food-out-schools-say-participants-a-cse-round-table> (Last Visited on 16th February 2015)

⁵⁶Lorillard Tobacco Co. v. Reilly, at 587 (citing Jeffrey P. Koplan & William H. Dietz, Caloric Imbalance and Public Health Policy, 282 JAMA 1579 (1999)).

⁵⁷Ibid

⁵⁸Crupkin M, Zambelli A. 2008. “Detrimental impact of trans-fat on human health: Stearic acid-rich fat as possible substitutes.” Comp Rev Food Sci Food Saf 7:273-9 (Source: Centre For Science and Environment, “Nutritional Analysis of Junk Food” CSE/PML/PR-41/2012 Available at: http://www.cseindia.org/userfiles/Nutritional_Analysis_Junk_Food.pdf) (Last Visited on 15th March 2015)

⁵⁹Oomen CM, Ocké MC, Feskens EJ, van Erp-Baart MA, Kok FJ, Kromhout D “Association between trans fatty acid intake and 10-year risk of coronary heart disease in the Zutphen Elderly Study: a prospective population-based study.” Lancet.2001; 357:746-51. (Source: Seddigheh Asgary, Bahar Nazari at el. “Evaluation of fatty acid content of some Iranian fast foods with emphasis on trans fatty acids” Asia Pac J Clin Nutr 2009;18 (2): 187-192 <http://apjcn.nhri.org.tw/server/APJCN/18/2/187.pdf>) (Last Visited on 25th February 2015)

fat consumption increases the risk of coronary heart disease, leading to recommendations by health experts that they be consumed only in traces.⁶⁰ Studies also show that too much of junk food alters the chemistry of the brain and are addictive like cocaine. High-fructose corn syrup (HFCS), monosodium glutamate (MSG), hydrogenated oils, refined salt, and various other chemical preservatives found in processed junk food do the same thing to a person's brain as cocaine does.⁶¹ Consumption of large amount of Caffeine (methylated xanthine) can cause diseases and disorders, such as, insomnia, nervousness, anxiety and so on, which has been used as an additive in soft drinks and is harmful to human life.⁶²

VIOLATIVE OF FOOD SAFETY AND STANDARDS ACT, 2006:

FSS Act has been enacted to consolidate laws relating to food and to establish the Food Safety and Standards Authority in India for laying down science based standards for articles of food. The Act is also intended to regulate the manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.⁶³ The Act also stipulates about the use of food additive or processing aid.⁶⁴ Often the people know very little about the additives allowed in our food. There has been a huge row over the potential dangers of artificial sweeteners. Most of the vanilla in food is made synthetically and that this chemical which has been harvested from paper mill effluent or coal tar components used in petrochemical plants. It is cheap, and it has been passed for human consumption by the food and drug administration of different countries.⁶⁵ The Act also provides a provision which regulates pesticides, veterinary drugs residues, antibiotic residues and microbiological counts and is of paramount importance.⁶⁶ The Consumer Federation Tamil Nadu (CONFET) has appealed to Chief Minister for the compensation to the family of child who died after consuming bottled soft drink. The death should serve as an eye-opener to the authorities about the consequences of laxity in implementing the provisions of the Food Safety and Standards Act, 2006.⁶⁷

NUTRITIONAL LABELING AND REGULATION OF MARKETING:

The Act has even mentioned about packaging and labeling of food.⁶⁸ Accordingly food businesses include hotels, restaurants, owners of small food stalls, dhabas, milk suppliers, fish stall owners, fruit and vegetable vendors, manufacturers, hawkers, small scale industrialists, fair price shop owners, self-help groups among others. According to the Food Safety and Standards Act India (FSSAI) 2006, every food manufacturer should get a license from the

⁶⁰“Why diet experts are worried about Indians and junk food”; DNA India, Sunday, 1 April 2012, New Delhi; <http://www.dnaindia.com/health/report-why-diet-experts-are-worried-about-indians-and-junk-food-1670068> (Last Visited on 18th February 2015)

⁶¹Ethan A. Huff, “Studies show junk foods change brain chemistry and are addictive like cocaine” Natural News Saturday, December 24, 2011 http://www.naturalnews.com/034478_junk_foods_addictive_brain_chemistry.html (Last Visited on 16th February 2015)

⁶²W.P. (C) 8568/2010

⁶³Centre for Public Interest Litigation v. UOI &Ors, AIR 2014 SC 49

⁶⁴Section 19 of FSS Act, 2006

⁶⁵Sunita Narain “Changing definitions of safe food; we need a food safety model based on societal objectives of nutrition, livelihood and safety” Business Standard, New Delhi March 24, 2013. Available at: http://www.business-standard.com/article/opinion/changing-definitions-of-safe-food-113032400355_1.html (Last Visited on 17th February 2015)

⁶⁶Section 21 of FSS Act, 2006

⁶⁷A.V. Rangunathan Cuddalore “Forum blames laxity in implementation of Food Safety Act for death of child who consumed soft drink ” The Hindu, February 13, 2014, Available At: <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/forum-blames-laxity-in-implementation-of-food-safety-act-for-death-of-child-who-consumed-soft-drink/article5683641.ece>, (Last Visited on 18th February 2015)

⁶⁸Section 23 of FSS Act, 2006

Food and Drug Authority or an authority connected to FSSAI.⁶⁹ The FSS Act deals with restrictions of advertisement and prohibition as to unfair trade practices.⁷⁰ It provides for restriction on advertisement of any food which misleads or contravenes the provisions of the FSS Act or the rules and regulations made there under. Advertisements for carbonated beverages are being monitored by the Advertisement Standards Council of India (ASCI), as per the above mentioned regulations as well as the ASCI Code. The most widespread advertising method is the use of broadcast promotions on television for junk-food products. Billboard and print advertising in newspapers and magazines are other familiar and widespread methods.⁷¹ More recently, market pressures have led to the creation of innovative forms of advertising, including in schools, on the Internet, through cell phones, and through product placement and promotion directly in the content of entertainment programming. Watching television has become “the dominant pastime of youth throughout the industrialized world.”⁷²

JUNK FOOD BANNED IN VARIOUS PART OF THE WORLD:

Evidences can be taken from the various parts of the world which have tried to combat the menace of the junk food through strict regulatory framework. Britain has the biggest obesity problem in Europe with nearly 26 per cent of the population being obese. The country banned junk food in schools in 2005.⁷³ A ban on junk food ads during television programs aimed at children below 16 years came into force in August 2008.⁷⁴ UK consumer advocates are now calling for their government to explore provisions allowed under the new EU regulation on food information to make sure that the ‘traffic light labeling’ is used on all food products.⁷⁵ The elementary schools in Arizona, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, New Jersey, New York, and West Virginia have already banned the sale of junk food in schools until at least after lunch.⁷⁶

Most recently the Punjab government has banned ‘junk food’ in and around schools. As per instructions, issued by Director General of School Education cum state Project Director under Sarva Shiksha Abhiyaan programme, there should be no such shop or eating joint inside or even outside (in nearby area) schools, which sells junk food. Due to easy availability of such food inside and nearby school areas, students develop the habit of eating junk food only there should be regular checking of the school canteen and nearby shops by health department officials, to stop the “menace of junk food.”⁷⁷ On January 21, 2011, WHO formally issued a

⁶⁹Umesh Isalkar, “food business operators lose licenses” The Times of India, TNN, May 27, 2014, 02.17AM IST Available at <http://timesofindia.indiatimes.com/city/pune/9-food-business-operators-lose-licences/articleshow/35624358.cms> (Last Visited on 17th February 2015)

⁷⁰Section 24 of FSS Act, 2006

⁷¹Centre for Public Interest Litigation v. Union of India and Others, AIR 2013 SC 234

⁷²Brian I. Wilcox et al., “Report of the American psychological association task force on advertising and children” American Psychological Association (2004), Available at : <http://www.apa.org/pi/cyf/advertisingandchildren.pdf> (describing various ways advertisers target children).(Last Visited on 19th February 2015)

⁷³Agence France-Presse “WHO calls for junk food ban in schools, playgrounds” Posted at 01/22/2011 4:40 PM ABS.CBN News <http://www.abs-cbnnews.com/lifestyle/01/22/11/who-calls-junk-food-ban-schools-playgrounds> (Last Visited on 16th February 2015)

⁷⁴Ban on junk food ads introduced, BBC News, Updated on: Tuesday, 1 January 2008, 08:01 GMT. Available At: <http://news.bbc.co.uk/2/hi/health/7166510.stm> (Last Visited on 16th February 2015)

⁷⁵Randeep Ramesh, “Food Standards Agency to be abolished by health secretary” The Guardian, Monday 12 July 2010 01.43 BST (Available At: <http://www.guardian.co.uk/politics/2010/jul/11/food-standards-agency-abolished-health-secretary>) (Last Visited on 16th February 2015)

⁷⁶Massachusetts Schools: Junk Food Banned, The Huffington Post, Posted: 15th July 2011 03:17 IST (Available At: <http://www.huffingtonpost.com/2011/07/14/massachusetts-bans-junk-food-at-school/>) (Last Visited on 16th February 2015)

⁷⁷Anju Agnihotri Chaba “Punjab bans junk food at school”<http://indianexpress.com/article/cities/chandigarh/punjab-bans-junk-food-at-school/>, Jalandhar, 14th August 2014 10:09 (Last Visited on 15th February 2015)

recommendation asking for a ban on junk food in schools and playgrounds in order to promote healthy diet and tackle child obesity.⁷⁸“Settings where children gather should be free from all forms of marketing of foods high in saturated fats, trans-fatty acids, free sugars or salt,” said WHO.⁷⁹

BUSINESS IN JUNK FOOD IS *RES EXTRA COMMERCIUM*:

Res extra commercium means, a thing which by law is excluded from the sphere of private transaction: thing not subject to commerce or trade; things which cannot be bought or sold. The expression means outside the commerce.⁸⁰ The doctrine was applied by SC, in subsequent cases, to hold that there is no fundamental right to trade in the business of a deleterious nature:⁸¹ or to deal in adulterated foodstuff.⁸² Indian Penal code also provides for punishment for anyone who sales noxious food or drink.⁸³

NO ABSOLUTE RIGHT IS PROVIDED UNDER 19(G):

The fundamental right of a citizen to carry on any occupation, trade or business under Art 19(1) (g) of the Constitution of India is not absolute; it is subject to reasonable restrictions which may be imposed by the State in the interests of general public.⁸⁴ The authorities, or private persons or industry are bound by the direction contained in Part IV, Part III and Preamble of the Constitution of India. The right to carry on trade is subject to directions contained in the Constitution, the Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Socio-Economic justice. Social security is a facet of Socio-Economic justice to the people and means of livelihood.⁸⁵ Cl. (6) of Article 19 authorizes the State to impose ‘reasonable restrictions’ upon the freedom of trade, business, occupation or profession.⁸⁶ The object of imposing restrictions under Clause (6) is to strike a balance between individual freedom and social control.⁸⁷ Government order issued in public interest overrides individual interest and the question of public interest must be considered not from the point of view of interest of the person on whom the restriction is imposed, even if the restriction operates on him harshly.⁸⁸

‘REASONABLE RESTRICTION’ INCLUDES COMPLETE PROHIBITION OF A BUSINESS:

Banning of junk food is a ‘reasonable restriction’ in the interest of general public. As the Interest of general public is a comprehensive expression comprising any matter which affects public welfare, or public convenience⁸⁹ e.g. public order, health, morality,⁹⁰ of the country,⁹¹

⁷⁸ Dr. Sapna Johnson, et.al “*Nutritional Analysis of Junk Food*” 2010 study conducted by scientists at Scripps Research Institute (SRI) (Source: Centre For Science And Environment, http://www.cseindia.org/userfiles/Nutritional_Analysis_Junk_Food.pdf (Last Visited on 15th February 2015)

⁷⁹ Ibid

⁸⁰ Godawat Pan Masala Products (Pp.) Ltd v. Union of India, AIR 2004 SC 600

⁸¹ State of U.P. v. Union of India, AIR 1957 SC 628(631)

⁸² Ibid

⁸³ Section 272 and Section 273 of Indian Penal Code, 1860

⁸⁴ Ramchand v. Union of India, AIR 1963 SC 563 (566)

⁸⁵ LIC of India v. Consumer Education Research Centre, AIR 1995 SC1811

⁸⁶ Article 19(6) (i) (ii) Constitution of India

⁸⁷ J.K. Industries Ltd v. Chief Inspector of Factories, 6 SCC (1996) 665

⁸⁸ State of Orissa v. Radheysham Meher, AIR 1995 SC 85

⁸⁹ Ibrahim v. R.T.A., AIR 1953 SC 79

⁹⁰ State of Maharashtra v. Himmatbhai, AIR 1970 SC 1157

⁹¹ Glass Chatons v. Union of India, 1961 SC 1514

implementation of Directives in Part IV.⁹² Hence under this power the State may impose restrictions, requiring that a beverage must contain a maximum percent of fruit juice.⁹³ Any business or trade irrespective of its nature is liable to be controlled or restricted by the State, if it is necessary in the interests of the general public, such as public order, morality, health or the like, provided such restrictions are not unreasonable.⁹⁴ The mere fact that the regulation of a trade would cause hardship to⁹⁵ or result in the elimination of a section of traders would not make the regulation unreasonable, for control or regulation of any kind is bound to cause hardship that are unable to satisfy the requirements of the regulatory rules or provision.⁹⁶ The *rationale* is that 'reasonable restriction' includes prohibition, having regard to the exceptional circumstances calling for restriction⁹⁷, namely, the patent and widespread danger to the community.⁹⁸ Thus the consumption of junk food if continued will cause inherent danger to the health of children.

CONCLUSION: Fast food availability is gift of the industrial life-style which needs to be modified in accordance to the healthy food guidelines. Children are not the best judge of their food. It clearly indicates that fast foods have become an important part of dietary menu for most children. Children are lured by convincing marketing strategies and peer pressure. Mass media had been found to been influential factor affecting the food choices of children. The adolescents consume junk food which is easily available near the school premises. Consumption of diet high in sugar, saturated fat, salt and calorie content in childhood can lead to early development of obesity and cardiovascular diseases. High levels of Trans-fats are a public health concern due to its association with chronic heart diseases. Such foods are regarded as not conducive in maintaining health. Arguably what we have seen from this study may be just the tip of the ice-berg. It is likely that a greater proportion of adolescents consume junk food. Fast food intake among children can be reduced by implementation of stringent laws to regulate the marketing of fast foods in Indian market. There should be mandatory labeling, at least for serving size, Trans fats, saturated fats, sugars and salt along with already mandatory labeling nutritional information for all processed foods including takeaway foods. Nutritional labeling of food might restrict the quantity of food ordered and choice of low fat menu among children of educated parents. As the junk food industry targets children, it is important to ban junk food from schools and places where children have easy access to these foods. Promotion of healthy eating habits and education about junk foods needs to be strengthened.

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⁹²Municipal Corpn v. Jan Md., AIR 1986 SC 1205

⁹³HamdardDawakhana v. Union of India, AIR 1960 SC 554

⁹⁴Chintamanrao v. State of M.P.M., AIR 1951 SC 118

⁹⁵Krishna Sugar Mills v. Union of India, AIR 1959 SC 1124

⁹⁶Sivarajan v. Union of India, AIR 1959 SC 556

⁹⁷Cooverjee B. Bharucha v. Excise Commissioner, AIR 1954 SC 220

⁹⁸Southern Pharmaceuticals v. State of Kerala, AIR 1981 SC 1863