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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO FOOD: EXAMINING THE IMPACT OF GOVERNMENT POLICIES ON DIETARY CHOICES.

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Key words: Human Rights, Business, Healthy Diet, Nutrition, Right to Food, Food Policies.

Abstract

The issue of the growing dietary divide between the rich and the poor and the considerable difference in the cost of junk vs. healthy food has gained traction over the last few years. With people becoming more aware and conscious of their health, there has been a recent shift towards healthier food options. However, a large portion of the population still consumes junk/unhealthy food. This owes to varied sociocultural factors like excessive advertising and targeted marketing, easy accessibility, infiltration into schools/universities¹, and the like. However, the major reason behind the excessive consumption of junk or processed food is its low cost. This paper aims to analyze the reason behind junk food being cheaper in the West. Arguably, several factors affect the price of junk food, but for this paper, the author restricts the present analysis to the role played by the State/Government in making junk food cheaper thereby affecting the dietary choices of its population.

Introduction

Disparities in the cost of healthy vs. unhealthy/junk food are becoming widely known as research in this field has increased considerably over the last two decades. Consequently, there has been a glaring dietary divide between the rich and the poor. As per the annual report “The Broken Plate 2021” published by the Food Foundations² on the current food system of the UK, it was observed that there are alarming inequalities between the rich and the poor strata of society in terms of the quality of food consumption and the nutrition intake. Moreover, it revealed that children belonging to the economically poor section of society were twice as likely to be suffering from obesity at a

¹ Andrea Freeman, ‘Fast Food: Oppression Through Poor Nutrition.’ (2007) 95 California Law Review.

² Tim Gardam, *The Broken Plate 2021* (Food Foundation CIO 2021).

very young age than children who belonged to financially well-off communities.

As per several studies and surveys, healthier food options are approximately three times more expensive in terms of calories than less healthy foods. According to a comprehensive review of 27 studies across 10 countries conducted by Harvard University back in 2013³, it was revealed that *“The healthiest diets cost about \$1.50 more per day than the least healthy diets.”* The study noted that healthier diet options i.e., diets rich in fruits, vegetables, fish, and nuts cost significantly more than unhealthy diets which usually include those high in processed foods, refined grains, and meat.⁴ As indicated in the review, a highly probable reason for the low costs of unhealthy diets is due to the focus on the production of “inexpensive, high volume” commodities which has resulted in *“a complex network of farming, storage, transportation, processing, manufacturing, and marketing capabilities (supply chain) that favour sales of highly processed food products for maximal industry profit.”* Thus, to understand the issue of low costs of unhealthy/junk food and vice versa, an in-depth analysis of the food supply chain needs to be looked into.⁵ However, for the purposes of the present paper, the analysis is limited to the first step – farming. In this regard, the implications of government subsidies on certain crops that ultimately have an impact on the cost of production of junk food will be dealt with.

Implications of Agricultural Policies on Dietary Choices

The current food system of America is largely the result of agricultural policies that made sense when the most pressing public health concern regarding food was a shortage of it and the United States aimed to “feed the world”. These policies were successful in increasing American farmer’s productivity, but in the present times they seem to be redundant and in fact counterproductive, providing billions in public funds to an industry that produces an excess of unhealthy calories while undermining the ability of the world’s farmers to make a living from their land. Today, these policies are framed in such a way that end up incentivising junk food consumption because of its low cost thereby affecting the dietary habits of the American population.

It is no news that a large population of America suffers from obesity and the major reason for the widespread prevalence of obesity in the States is due to the American Plate increasingly lacking

³ Ashkan Afshin and Mayuree Rao, ‘Do Healthier Foods and Diet Patterns Cost More Than Less Healthy Options? A Systematic Review and Meta-Analysis’ (2013) 3 BMJ Journal.

⁴ Marge Dwyer, ‘Eating Healthy Vs. Unhealthy Diet Costs About \$1.50 More Per Day’ (News, 2013) <<https://www.hsph.harvard.edu/news/press-releases/healthy-vs-unhealthy-diet-costs-1-50-more/>>

⁵ ‘Why Does Eating Healthier Cost More?’ (Medium, 2018) <<https://medium.com/age-of-awareness/why-does-eating-healthier-cost-more-82bad6e04ec4>>

nutritious food and instead being more inclined towards food that is very high in calories (Salt, Sugar, and fat). Studies have indeed shown strong links between diets low in fruits and vegetables and suffering from chronic diseases like diabetes and obesity.⁶ These two diseases now pose the gravest health concerns for the country owing to its dietary habits/nutrition intake. Grain-based desserts like cookies, doughnuts, and granola bars, along with bread, sugary drinks, pizza, and dairy desserts are among the top ten sources of calories for the American population and thus form a regular part of their diet. As explained by Vox⁷, for the same amount of money a US citizen gets twice as much doughnuts as compared to Apples while the calorie intake by consuming a doughnut is much higher than an apple. Thus, for a layman, the most viable option seems to be the doughnut as it costs less and ensures greater calorie intake thereby satisfying their hunger. However, the cost-effective choice is usually not the nutritionally sound one. Produce is essential for a healthy diet and Americans are not eating enough of it owing to its cost.

The reason behind these diets that are rich in calories but contain hardly any nutritional value being cost-effective, is due to the major ingredients that go into making these food items. The top ten foods listed in the above paragraph have something in common. They are largely the products of seven crops and farm foods — corn, soybeans, wheat, rice, sorghum, milk, and meat. These crops and food are heavily subsidised by the federal government thereby ensuring junk foods are cheap and available in abundance. On the other hand, fresh fruits and vegetables are more expensive to grow as compared to processed commodities. Produce requires human labour instead of machines, and machines are more efficient and cost less in the longer run. Moreover, unlike wheat, soy, and corn, which are key constituents in a lot of junk food, the US government does not subsidise leafy vegetable crops. Thus, the high production costs of fruits and veggies have an impact on their prices and the resulting high price discourages the average American consumer from including the produce in their diet. Instead, the consumer shifts to unhealthier options which mostly refer to packaged, highly processed, long shelf life products like soda, sweets, and salty snacks which contain high fructose corn syrup, a sugar substitute which is available at a very cheap price as the US government heavily subsidises corn. Thus agricultural policy plays a huge role in making junk food cheaper and a study published in *JAMA Internal Medicine*⁸ indicates a

⁶ Min Li and Yingli Fan, 'Fruit and Vegetable Intake and Risk Of Type 2 Diabetes Mellitus: Meta-Analysis Of Prospective Cohort Studies' (2014) 4 BMJ Journal.

⁷ Vox, 'Why eating healthy is so expensive in America', YouTube (Mar. 22, 2018), <https://www.youtube.com/watch?v=HOE5QDDKDIY>.

⁸ Siegel KR, McKeever Bullard K and Imperatore G, 'Association of Higher Consumption of Foods Derived from Subsidized Commodities With Adverse Cardiometabolic Risk Among US Adults.' (2016) 176 JAMA Intern Med.

disconnect between the nation's agricultural policies and the nutritional recommendations which require Americans to consume 50% fruits and vegetables as part of their diet. The 2016 report⁹ found that more than 50% of Americans' calorie intake was from the seven crops listed above-five of them are designated "commodity crops" as per the US Department of Agriculture and the remaining two-as dairy and livestock (animals that eat commodity crops). Commodity crops are typically grown in large volumes and at high intensity, specifically for sale to the commodities market which consequently lowers the price of the flours, oils, sweeteners, and meat that go into fattening junk foods.

Commodity crop production in the United States dates back to colonial times and the origin of the organised markets for the Future Group product's sale and speculation was established during the 1840s in Chicago. The US "Commodity Futures Trading Commission" was later established with the intention to regulate Future's contracts for agricultural commodities, and have been traded in the United States for over 150 years and have been under Federal regulation since 1920.¹⁰ The commodity crops are now widely recognised for the immense support they receive from the federal agricultural subsidies that were initiated as a result of the Great Depression. The commodity crops are also argued to have partly contributed to lowering food costs globally. Originally, the motive was to let industrial food expand worldwide and curb global hunger to the maximum extent possible.

The US government spent about \$170 billion in agricultural subsidies to finance the production of these commodity foods between 1995 to 2010.¹¹ These may not be inherently unhealthy, but only a minute percentage of them are consumed as is while most are converted to cheap products and additives like corn sweeteners, industrial oils, processed meats, and refined carbohydrates. All these products are common ingredients found in packaged industrial food and are very harmful to an individual's health. Thus, with the excessive consumption of these packaged and processed food alongside the exploitation of public at the corporation's hands for their selfish profit motives, it is time that the government reconsiders its agricultural policies that still heavily subsidise these commodity crops which are deteriorating the nation's health. The agricultural programs which

⁹ Ibid.

¹⁰ 'The Commission | CFTC' (Cftc.gov, 2022) <<https://www.cftc.gov/About/AboutTheCommission>>

¹¹ Aubrey A, 'Does Subsidizing Crops We're Told to Eat Less of Fatten Us Up?'

<<https://www.npr.org/sections/thesalt/2016/07/18/486051480/we-subsidize-crops-we-should-eat-less-of-does-this-fatten-us-up>>

are part of the US Farm Bills (revised every 5 years) no longer serve their original purpose of satisfying global hunger and the cons simply outweigh the pros. In light of the increased risks of chronic diseases, it is pertinent to discuss steps and measures that could be taken to change the existing trend.

Possible Measures to Incentivise Healthier Diet Patterns

As already established, the cost of food has a direct impact on what people buy and eat. A way to ensure general population's intake of healthy fruits and veggies is by repositioning the priorities on agricultural subsidies away from commodity crops and towards fruits and vegetables which would make the healthier options more affordable. Another measure to keep a check on the population's health could be by levying a 'junk food tax' on non-essential foods like- chips, soda, and candy. E.g. tax on sugary drinks will force people to cut back on their consumption and instead raise revenue which could be utilised in incentivising obesity prevention programs.¹² Experts find reasons in similar taxes on alcohol and cigarettes that have worked to curb consumption and believe it should work for food too. Various countries worldwide have opted for measures like subsidies and taxes on healthy and unhealthy foods respectively to combat the growing pattern of junk food consumption. In 2014, Mexico imposed an 8% tax on non-essential, energy-dense foods, resulting in a 60% decline in purchases of these commodities. Denmark imposed a €214 per kilogram saturated fat tax on items with more than 23% saturated fat per 100 g in 2011. Although the tax was eventually withdrawn in 2013, it was projected that during its implementation, saturated fat purchases decreased by 40% and fatalities due to non-communicable illness decreased by 4%. Further, Hungary has imposed a tax on pre-packaged goods high in salt, sugar, or caffeine (at various rates), which has resulted in a 34% fall in processed food consumption (and a compensatory 11% rise in unprocessed food).¹³

The US Farm Bill of 2014 encouraged farmers to grow organic food by providing them with support in terms of funding for research and allowing the farmers who grew commodity crops to use 15% of their farmland to grow fruits and veggies and other specialty crops. It also contributed to a "healthy incentives" program that encourages food stamp recipients to eat more fruits and

¹² 'Food Pricing, Taxes, And Agricultural Policy' (Obesity Prevention Source, 2022)

<<https://www.hsph.harvard.edu/obesity-prevention-source/obesity-prevention/food-environment/food-pricing-and-agricultural-policy-and-obesity-prevention/>>

¹³ Blakely T and others, '*The Effect of Food Taxes and Subsidies on Population Health and Health Costs: A Modelling Study*' (2020) 5 The Lancet Public Health

vegetables by raising the value of food stamps used to purchase fresh produce at grocery shops or farmers' markets. While some experts believe that this has resulted in people consuming increasing amounts of fresh produce, some are not so hopeful. As noted by a Research Professor at the University of Texas, - the funding for fruits and vegetables in the most recent farm bill was "crumbs" when compared to the billions in subsidies for commodity crops.¹⁴ Few more plausible solutions may be found on the demand side by creative advertising for healthy eating and stringent regulations on false advertising that are targeted towards specific communities (children/women) in the name of "healthy" and "organic" food to mislead the consumers. Taken together, accentuating the supply of fruits, vegetables, and other nutritious foods and investing in programs, infrastructure, and research to make them accessible, and available at affordable prices can play a significant role in transitioning diets from poor into rich in nutrition. The need of the hour is the government's intervention through a National Food Policy which has the potential to reshape the food system as has already been witnessed in American history during President Nixon's term wherein he revamped farm policy to boost corn and soy production and overcome the food prices.¹⁵ Thus, a comprehensive National Food Policy dedicated to food, health, and well-being of the citizens can go a long way in changing population nutrition.

Concluding Remarks: Human Rights Critique

The framing of agricultural policies in a manner that promotes commodity crops, thereby making junk food cheaper has a direct impact on consumption patterns as already noted. This inevitably leads to the deteriorating health of the population, thereby undermining their right to food and health which are recognised as fundamental human rights since the inception of the International Human Rights regime. *Articles 11 and 12* of the International Covenant on Economic, Social and Cultural Rights (ICESCR) read with *Article 25* of the Universal Declaration of Human Rights (UDHR) emphasise the importance of these Human Rights which every human is entitled to.¹⁶ The UN Guiding Principles on Business and Human Rights, which contain three chapters, also known as the three pillars; - *protect*, *respect* and *remedy* define the concrete steps for governments and companies to meet their respective responsibilities to ensure the prevention of any human rights violations occurring in company operations and enable greater access to effective

¹⁴ O'Connor A, 'How the Government Supports Your Junk Food Habit' (*Well*, 2016)

<<https://well.blogs.nytimes.com/2016/07/19/how-the-government-supports-your-junk-food-habit/>>

¹⁵ Ehrenberg R, 'Finding the Fat: The US Farm Bill and Health' (*Knowable Magazine / Annual Reviews*, 2018)

<<https://knowablemagazine.org/article/society/2018/finding-fat-us-farm-bill-and-health>>

¹⁶ Carmen G. Gonzalez, *The Global Food System, Environmental Protection, And Human Rights* (7th ed., NAT RESOURCES & ENV'T 2012).

remedies.¹⁷ The first pillar is the *State's Duty to Protect* the Guiding Principles and in light of the present paper, the State/Government is under an obligation to ensure the Right to Health and Food of the people is not compromised for their personal revenue or the corporations profits that end up benefitting from the actual sale of junk/packageged or processed food. The State should actively take steps to frame agricultural policies with appropriate tax and subsidy structures so that nutritious food is made available to the general public at affordable prices thereby reforming their dietary patterns and acting as check on their health. Reducing the enormous global health burden of poor diets is indeed a major challenge facing the 21st century and revamping the global food system lies at the very core of efforts to overcome this challenge.

¹⁷ *THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS AN INTRODUCTION* (United Nations 2011).