

## Pricing Children: Child Labour at a Different Level

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**Abstract**—Children, for their adorable and eye-catching nature, has become the principal artists in advertisements today. Henceforward, the research problem is on how ethical and legal the use of children in advertisements is in Sri Lanka. The objective of the research is to analyse the loopholes of the existing domestic legal protection entrusted upon child performers of advertisements. The secondary objective is to make amendments that could be brought forth to halt the conduct of abusive child labour that takes place in open air. Special focus is made on the situational settings under which child performers are molested and the justness of the procedure followed in hiring children as advertisement models. In order to establish the need of building a suitable work environment for child performers, legal research methodology was followed, which was based on library centred secondary data review. Further, a comparative analysis with a selected jurisdiction was carried out to identify the currently existing weaknesses of the domestic labour law concerning children. A mixed method of interviewing key stakeholders was conducted as a primary method of data collection. When children are hired for advertisements, it results in neglecting education, being forced to act with temporary strange elders, limiting their same age contact while seizing them in an abstract world. During the time of the performance the child performer would be subjected to the undue control of strangers and be exposed to uninsured risky environmental conditions. Hence, the intended research outcome is to introduce a policy paper with recommendations aiming to assist the law making commissions when amending the existing domestic legal framework related to children. Establishing the fact, children who are hired for inherent arty skills is a form of child labour, it could be concluded that, they too need to be provided with protections prevalent in the labour market.

**Keywords**— Advertisements, Child Performers, Legal Protection

### I. INTRODUCTION

Advertising is campaigning to induce the target public, to embrace the promoted artifact or person over other competitors, through creating a psychological bond between the target audience and the imaginary supranormal product or first class ripping personality.

Amongst the continuous growing trends, in order to hook the attention of the target customer base, children, for

their appealing nature and liveliness, have now become models of majority of television commercials. And the parents or guardians of such children, due to being blindfolded by the smell of money notes let their children in advertisements without being concern on the harm it could create on their child's future.

However, now, the lack of legal recognition given to these child performers have created a certain level of public activism due to the associated substantial child rights violations within the scope of Labour Law.

Hence, the rationale of this research is to voice out the unheard little artists, who have no bargaining power to fight for their rights.

### II. METHODOLOGY

Legal research methodology was followed. The source of library based secondary data review was referred to. Furthermore, a comparative jurisdictional analysis was made with New York, USA. Number of interview sessions were conducted for primary method of data collection. The mixed method was adhered to when establishing the recognized objectives. The identified stakeholders were child performers in advertisements, parents or guardians of such child performers, advertisers, television viewers and experts in the field of Labour Law and Child Rights.

### III. RESULTS

The expected outcome of the research is to introduce a policy paper which would have a prime focus on the new area of law, which is child labour that takes place in commercial advertisements. Attention of the law making commissions is wished to be diverted towards the fact that the child performer would be subjected to the undue control of strangers while having to work for long hours in order to cope up with the time and budget constraints and they would also be exposed to uninsured risky environmental conditions during the time period of being enslaved away from the parent or guardian.

Furthermore, when hiring a child for performance in advertisements, statutorily requiring both parents or guardians and the advertiser to consider the impact on the child's education and the promoted product or promoted personality and the character of the director would ensure

that the child performer contracts entered into are prepared at the best interest of the child.

#### IV. DISCUSSION

A child going in line with the Convention on the Rights of the Child, is “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (CRC, 1989, Art.1).

They, as minors, statutorily, should not be employed until the attainment of the age of fourteen years as per the Employment of Women, Young Persons and Children Act No. 47 of 1956.

However, the scope of the research is not the “children who attend to school or other institution supervised by a public authority and imparting technical education or other training for the purpose of any trade or occupation as a vocational development” (Employment of Women, Young Persons and Children (Amendment), Act No. 8, 2003, Sec.14(1)(b)).

But, those hired on a casual basis into child modeler banks of advertising agencies for the purpose of being used in one off advertisements with no prior training or scrutinizing of competencies in the field of performing or drama.

The analysis made the researcher to understand that, child performers is a form of labour, an illegal commitment which does not reflect to be a work which a child could legally commit him or herself.

This derivation is upheld by the dangerous and negative implications, ‘which impairs the health and development of the children’(Fyfe, A., 1989), which the research would discuss as what the children undergo due to being employed as child performers.

Having established that child performers is a form of child labour a furtherance of the discussion is made by identifying the practical difficulties faced by child models. A child’s engagement as a child performer, enslaves the child from his or her family for nights, due to such advertisement projects taking a minimum of seventy hours for the direction. Which in turn hampers the child’s usual daily routines such as schooling and leisureliness, while depreciating the physical and mental wellbeing.

Furthermore, as per the social norm, a child unlike a person who has reached full level of maturity, would have to undergo a considerable level of psychological straining to adapt himself to an artificial abstract world which involves interaction with varying degrees of disciplined strangers, while he or she is engaged in the direction of the commercial.

However, the researcher does not wish to contend on the fact that child performers should be completely abolished. Because it would be seen irrational to impose such a measure on advertisers and the commercial world as a whole.

Instead, developing a legislatively controlled environment for the advertisers, when hiring children as models, is suitably commended.

##### A. Physical and psychological impact on the child model

A child becomes a child modeler by a contractual agreement between the advertising agency that directs the advertisement and the guardian or the parent of the child. Here, the child performer’s consent is more often than not wholly disregarded. This possibly is due to the contractual incapacity of the child on the basis that, it is given by a person, who, is unable to understand the nature and consequence of that to which he or she consents or as it is given by a person who is under twelve years of age (Penal Code of Sri Lanka, No.2 of 1883, Sec. 83).

While on one hand, parents or guardians in whose control and custody the child is, act as the exploiter intermediary and negotiate a financial exchange for the artistic appearances made by the child, on the other hand, they hold a primary responsibility for the upbringing and development of the child, where the best interest of the child will be their basic concern (CRC, 1989, Art.18 (1)).

However, in reality, greater the financial gain, blurrier would the importance of the child performer’s educational, social and technical and other health and psychological aspects be in the sight of the parents and guardians of the child models.

Furthermore, Sri Lanka, as per the Charter on the Rights on the Child should protect the child from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, and to protect from any act which is harmful to the child’s health or physical, mental, spiritual, moral and social development (Charter on the Rights on the Child, 1991, Art. 32(1)). Therefore, any economic use of a child which would be seen as an act that would hinder the physical and mental development of a child should, be prohibited. However in Sri Lanka, within the broad domestic legal sphere concerning child labour, not much of emphasis has been made on child performers, which is now a trendy form of child exploitation.

This lack of precisely defined appropriate domestic legislature to guide the legal custodians of the child models and the advertisers who employ children in

advertisements, has left the fundamentally marginalized little artists' voice on the following aspects unheard.

1) *Educational aspect:*

During the time of the performance, the child would have to diverge from studies. This would result in the child forming an inclination towards modeling while declining the enthusiasm towards studies.

Furthermore, the child performer may miss important learning programs at school due to advertisement directing being scheduled on school days.

Moreover, no concern is rendered towards the academic achievement of the child. If the child is in his lower grades at school and being contracted in performing in a television advertisement would further weaken his progress in studies. Similarly, if the child is potentially capable of excelling one's intellectual capacity, the entrance into the field of modeling would result in the child forgoing education and being addicted to be on the screen.

2) *Social aspect:*

Family plays an irreplaceable role in the lives of children. This strong involvement contributes positively for the child's mental and emotional wellbeing.

Understanding that childhood is the most vulnerable age of any person, the interaction child performers make with temporary strangers who, in order to get their task done, create an overly pleasing environment, which may not be as pleasing as what the child's loved ones could create, results in the child to yearn for the temporary fake affection shown by the strange advertising crew over the forever real love of his family.

Furthermore, childhood being the most adventurous age of a person, it is also the most adult supervision requiring age. A person by the mere achievement of maturity would not be sufficiently capable to control and parent a child. Hence, an entirely observant child mentor needs to be attentive at every movement made by the child performer. However, in the low budget world, today, expecting an advertiser to voluntarily incur an added cost on a child mentor may seem unlikely.

Moreover, being employed as child performers, limits the child's same age contact. The bouncy, colorful, energetic, leisurely childhood that every child is naturally inherited with, will not be equally enjoyed by child performers. Instead, they will be mentally stressing themselves to by heart dialogues or the gestures of the script of the advertisement.

3) *Technical and health aspect:*

The absence of a standardized format for the contract between the guardian or parent of the child performer and the advertiser has resulted in, contracts with many loopholes in the favor of the advertiser.

Conditions such as not bringing the child performer in contact with reckless and risky environment, recruitment of a medical supervisor to medicine the child performer are overlooked by the advertiser in order to sidestep from the liability over the child's safety and health. Ignorance with this regard would bring many negative repercussions to the child performer's life.

Lack of proper sanitary facilities and cleanliness, unhygienic short meals, insufficient ventilation in the temporary rest rooms are the other forms of negligence on the advertiser's part, which child performers silently suffer from.

In addition, long continuous hours of filming of advertisements, to cope up with a low budget allocation, results in pressurizing the child to engulf the artistic character to be performed. This both mentally and physically molests the child, which not only would create a temporary impact but could be seen as an unforgettable terrifying experience that would linger in the child performer's memory for years.

4) *Psychological aspect:*

Child models are used in all forms of promotion, whether it be a politician, a businessman or even products such as mobile phones and other products which are not attributable to children. Use of children in these advertisements has created an inquisitive concern in children who act in them, to utilize such products or follow such persons as role models of their life. This has resulted in them being overly matured to their age.

Certain child performers get locked away from reality and absorb themselves in abstract worlds. More the temporary worlds they create bondages with, more would they get trapped in the psychologically created worlds. Additionally, some child minds find it challenging to bear the loosing of the social recognition and popularity they have won. And this results in mentally handicapping them.

Moreover, not all personnel in the advertising world hold unblemished characters both as advertisers and as humans. There is a high vulnerability of innocent child performers, behind the curtain, from being used in unlawful and abusive scenes and be physically harassed. This would add a forever black mark to the child's future.

*B. Solutions through a comparative jurisdictional analysis – New York, USA*

Amongst the prime international instruments, the Convention on the Rights of the Child has made a clear emphasis that, any action, whether undertaken by the public or private welfare institutions, courts of law, administrative authorities or legal bodies, if it is concerned with children, best interest of the child shall be of paramount importance (CRC, 1989, Art. 3(1)). Hence, having recognized the adverse implications of the use of child labour, the Convention has created an obligation upon the state parties to ensure that, no child would be economically exploited and that, children, in any circumstantial background, would not engage themselves in any activity that would hamper their physical and mental growth or their educational advancement.

As a signatory party to the Convention and other child rights protecting statutory bodies, New York, United States of America, has established an authority by Labour Law, by which child performers are also regulated by the Arts and cultural Affairs Law, the Estates, Powers and Trusts Laws, and the Education Law. These regulations establish new responsibilities for employers (advertisers), as well as parents/guardians of child performers (GovernmentNY, Labour Standards, 2016).

Nevertheless, in Sri Lanka, the lack of standard and readily accepted ethical guidelines or regulations with clear instructions for the advertisers to follow, when using children in advertisements, has become a strong defense followed by the advertisers in litigations that are instituted against them. This unarguable defense has left many child performer rights violations unanswered.

Below outlined suggestive new regulations have been derived through a comparative analysis made on the New York Code of Rules and Regulations – Part 186 on Child Performers (GovernmentNY, Child Performer Regulations).

The contract with the advertiser, in order to gain validity, must statutorily said to be supported with evidence of satisfactory level of academic performance at school with the signature of the performer's school representative. This ensures that children of lower grades would not be preoccupied from studies (New York Code of Rules and Regulations, 2013, 186-5.1).

In addition, the advertiser should be made to mandatorily provide in the contract, for flexy performing hours, for the child to fulfill his educational requirements. This would not only encourage the child to excel in academic performance but also to be an all-rounder with multiple personalities (New York Code of Rules and Regulations, 2013, 186-6.2).

Specific guidelines must be statutorily set, on the permitted working hours of a child Performer, by giving special regard

towards meal periods and rest periods with at least 12 hours of rest between workdays. While establishing that, Infants under 15 days old must not be employed as child performers, factors such as, whether the child performs after school hours must be taken into consideration by the legislative bodies when developing schedules of employing child performers, instead of exploiting them at ad hoc intervals (New York Code of Rules and Regulations, 2013, 186-6.3, 186-6.4). This would ensure that a uniform minimum age for child performers is legally recognized and working hours for them would be followed (Charter on the Rights on the Child, 1991, Art. 32(2)(a)(b)).

Based on the interpretation given to "individual in a supervisory role with respect to a child performer" by the bill To limit the number of hours that children may be employed as actors, performers, and models, to require blocked trust accounts for the financial protection of such children, to clarify the liability of employers, contractors, and other individuals for sexual harassment of such child performers, and for other purposes, presented to be enacted by the Senate and House of Representatives of the United States of America in Congress assembled, it can be introduced that every advertiser should either employ a medical supervisor who is an individual in a medical supervisory role to the child performer or should ensure that the child performer's parent or guardian provides with an experienced supportive hand. And the direct supervisor should be responsible for working with the child performer in any capacity in furtherance of the performance or artistic expression of the child performer.

As per the Penal Code Section 286A any person who hires, employs, assists, persuades, uses, induces or coerces, any child to appear or perform, in any obscene or indecent exhibition or show or to pose or modeler for, or to appear in, any obscene or indecent photograph or film or who sells or distribute, or otherwise publishes, or has in his possession any such photograph or film commits the offence of obscene publication and exhibition relating to children and shall be convicted (Penal Code of Sri Lanka, No.2 of 1883, Sec 286A). However, no interpretation has been given on the terms "obscene" or "indecent". Understanding the vagueness in them, a strict interpretation of the terms in the Code may limit the chances of the advertisers from escaping through the loopholes of the only existing national law which protects the child performers.

Furthermore, measures need to be taken to address those performers who have already been marginalized. They need to be directed towards suitable rehabilitation institutions and be provided with appropriate vocational training. Thereby, they need to be gradually integrated into

the society (Worst Forms of Child Labour Convention, 1999, Art.7(2)(c)).

Establishment of a body similar to the Screen Actors Guild (1933), could enforce collective bargaining agreements that would establish equitable levels of wages and working conditions for child performers who obtain membership in this body. The sincere aim of this body should be to improve wages and working conditions of the child performers.

Furthermore, a complete disclosure of the physical fitness of the child performer needs to be submitted along with other details of the contract of employment of the child as a modeler. If there are any health limitations such as wheezing and allergies, they need to be specifically mentioned and be certified by a licensed medical practitioner or school health professional (New York Code of Rules and Regulations, 2013, 186-3.2(b)(6)). This would ensure that children who are medically unfit would not be contracted into child performer contracts by money minded short sighted parents and guardians.

Moreover, the health hazards to the child performer's life, which may occur due to being employed in dangerous and precarious environments must be addressed. Therefore, it is vital to include in the contract, that the child performers will be fully insured and compensated by the advertiser over injuries that may occur during the time spent by the model in performing the advertisement.

Additionally, a screening process with moral limits, to assess which commercials could employ child performers, should be legislatively introduced. For instance, if a child is used in a commercial that promotes contraceptives, it would create a negative impact in the child's mental personality. Similarly, if a child is used in a commercial which promotes unhealthy food products such as carbonated drinks, then they spread a wrong message while encouraging the child himself to use it. As per Professor Harendra De Silva, due to the strong message of racism being spread through the election campaigns, children should not be used in them, as it would not only induce the child performer but also, the younger generation who is targeted by the performance of the child performer to embrace racism ( Kids for Sale, 2015).

Statutory guidelines must be introduced for a standard format for the contract between the child performer's parents or guardian and the advertising agency. It should be fully disclosed with the advertising company's registration name, number, business address in addition to the guarantee of sanitary facilities and cleanliness, provision of hygienic meals throughout the contract period along with adequate relaxation hours. Furthermore, the

contract should compulsorily be documented with information about the child performer, in addition to a complete disclosure of the role performed, type of the commercial, addresses of locations of employment, time duration of the contract, level of education at school and health fitness along with potential hazards associated with the specific activities that the performer will be expected to perform (New York Code of Rules and Regulations, 2013, 186-6.5).

Also, the advertiser should be mandated to maintain special databases on each child modeler's personal information which would essentially include, parent or guardian emergency contact information, authorization for emergency medical treatment and blood group of the performer.

Lastly, a civil penalty could be imposed at any violation of child performers' rights and noncompliance of the proposed guidelines. Factors such as value of the advertiser's business, the gravity of the violation and the history of previous violations could be taken into consideration when deciding the penalty. This penalty or sanction imposed, would ensure that Sri Lanka through legislative, administration measures has effectively enforced the Charter on the Rights on the Child (Charter on the Rights on the Child, 1991, Art. 32(2)(c)).

#### V. CONCLUSION

As per Article 32 of the Convention on the Rights of the Child, state parties should recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development (CRC, 1989, Art. 32(1)).

Hence, whether it be a factory employment, sex worker, street begging which involves physical deterioration or even being employed as a child performer which would be seen as an interference to the child's physical, mental or social development it would be seen as an exploitation of the child.

However, it has to be understood that as stated, completely preventing children from performing in advertisements could be seen as irrational by the practical and commercial world.

Therefore, bearing in mind that education and mental and physical stability are the two key factors that contribute towards shaping the personality of the future generation of a country, a strong legally controlled environment needs to be developed for the advertisers to operate in concerns regarding child performers.

#### ACKNOWLEDGMENT

Finding sources for the research was a challenge due to the novelty of the subject matter. Therefore, the contribution made by the selected child performers, parents of child performers, advertisers and the general television viewers at the interactive discussions held by the researcher with them is greatly appreciated and thanked. Moreover, the researcher wishes to extend sincere gratitude towards Ms. MRİK Munasinghe, Mrs. Hasini Rathnamalala and Ms. Namudi Mudalige for the commendable assistance provided in preparing the abstract and the full paper. Further, the continuous backing and support rendered by the researcher's parents and colleagues is humbly remembered.

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