



Two Fundamental Rights Petitions Challenging Excise Notification No 4/2018

Violation of Rights Guaranteed under the Constitution of Sri Lanka

23rd January 2018, Colombo, Sri Lanka: Two Fundamental Rights Petitions were filed challenging the validity of Excise Notification No 4/2018 of the Gazette Extraordinary No. 2054-42 issued by the Minister in charge of the Ministry of Finance and Media on 18th January 2018. The effect of Excise Notification No 4/2018 is to reintroduce:

- (a) The prohibition on women above the age of 18 to manufacture, collect, bottle, sell or transport liquor.
- (b) The prohibition on women above the age of 18 from being employed for manufacturing, collecting, bottling, sale or transport of liquor.
- (c) The prohibition on “giving” liquor to “a woman within the premises of a tavern”.

The two Petitions were filed on the basis of the violation of specific rights guaranteed under the Fundamental Rights Chapter in the Constitution of Sri Lanka. The position of both Petitions is that regardless of whether a woman actually engages in these activities, her constitutional right to make that choice for herself should be respected to the same extent as that of a man.

The first Petition was filed by five women on their own behalf and in the public interest. They are Bhavani Fonseka, Sumika Perera, Anusha Coomaraswamy, Shreen Saroor and Minoli de Zoysa. The five petitioners assert that Excise Notification No 4/2018 is a violation of their rights guaranteed under Article 10 [freedom of thought], Article 12(1) [equal protection of the law], Article 12(2) [non discrimination] and Article 14(1)(g) [freedom to engage in a lawful occupation, profession].

The second petition was filed in the public interest by the Centre for Policy Alternatives (CPA) and its Executive Director, Dr P. Saravanamuttu. The petition alleges that the prohibition violates the rights guaranteed under Article 10, 12(1) and 12(2) of women above the age of 18 who constitute a significant segment of the People of Sri Lanka.

International and Domestic Commitments

In addition to the violation of certain rights guaranteed under the Constitution, the prohibition is contrary to a range of commitments made by the Government of Sri Lanka including at a minimum the International Convention on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). CEDAW fundamentally makes all forms of discrimination against women a breach of international law. Two key recommendations made in the CEDAW Committee’s 2017 report to Sri Lanka were to ensure the de facto prohibition of discrimination against women, and to review all legislation for conformity with CEDAW. It was also recommended that the state accord statutory recognition to the right to equality and non-discrimination, and ensure that all CEDAW provisions are enforceable.¹

¹ CEDAW Country Report 2017 para 12.

The National Human Rights Action Plan 2017-21 (NHRAP), which provides a detailed plan for human rights protection in Sri Lanka, includes gender equality as a key theme. The NHRAP affirms that “the government is currently working towards achieving gender equality through the enactment of gender sensitive laws, formulation of policy and through action plans.”

Furthermore, in May 2017, Sri Lanka regained inclusion into the European Union’s (EU) Generalised Scheme of Preferences (GSP+). The scheme vastly reduces duties on exports to the EU on the condition of improving compliance with 27 international conventions, including CEDAW.

Finally, Sri Lanka also adopted the UN’s Sustainable Development Goals (SDGs) in September 2015.² In particular, Goal 5 seeks to “Achieve gender equality and empower all women and girls”. This includes commitments to end all forms of discrimination (5.1) and ensure that policies and enforceable legislation promote gender equality and empowerment (5.c). The GOSL has highlighted its commitment to the goals in a range of domestic processes, including the NHRAP and government policy, and will be subject to international follow-up and review of the SDG commitments in coming years.

² United Nations Resolution A/RES/70/1