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**IN THE SUPREME COURT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF SRI LANKA**

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In the matter of an Application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Centre for Policy Alternatives (Guarantee) Ltd.,  
No 6/5, Layards Road  
Colombo 00500
2. Dr. Paikiasothy Saravanamuttu  
No. 03, Ascot Avenue  
Colombo 00500

**PETITIONERS**

SC (FR) Application No.

VS

1. Mangala Samaraweera  
Minister of Finance and Mass Media,  
The Ministry of Finance and Mass Media  
The Secretariat Lotus Road  
Colombo 00100
2. Dr. R.H.S. Samaratinga,  
Secretary to the Treasury and Secretary to the  
Ministry of Finance  
The Ministry of Finance and Mass Media  
The Secretariat Lotus Road  
Colombo 00100

Sinnadurai Sundaralingam & Balendra  
Attorneys-at-Law & Notaries Public  
367 4/1 Dam Street, Colombo 01200  
Tel: 25 444 00 E-Mail: lawyers@sblaw.lk

3. The Honorable Attorney General  
Attorney General's Department  
Hulftsdorp  
Colombo 01200

**RESPONDENTS**

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On this 22<sup>nd</sup> day of January 2018

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**TO: HIS LORDSHIP THE CHIEF JUSTICE AND OTHER HONOURABLE  
JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

The **Petition** of the Petitioners above named appearing by RAJ MOAHAN BALENDRA practising in the name style and firm of

**SINNADURAI SUNDARALINGAM & BALENDRA**  
and his Assistants JAYASURIYA ARACHCHIGE JUDITH SONALI PERERA,  
USHETTIGE NIMASHA SHAMEN PERERA and THARINI SEVINDI  
SALWATHURA their Registered Attorneys state as follows:

**THE PETITIONERS**

1. The 1<sup>st</sup> Petitioner is a body incorporated under the laws of Sri Lanka (and duly re-registered in terms of the Companies Act No.7 of 2007) and is made up of members, more than three-fourths of whom are citizens of Sri Lanka.
2. The primary objects of the 1<sup>st</sup> Petitioner are *inter alia* to make inputs into public policy-making and implementation process in constitutional, legislative and administrative spheres to ensure responsible and good governance, and to propose to the government and parliament and all other policy-making bodies and institutions, constructive policy alternatives aimed at strengthening and safeguarding democracy, pluralism, the rule of law, human rights and social justice.

True copies of the Certificate of Incorporation and Memorandum and Articles of Association of the 1<sup>st</sup> Petitioner are annexed hereto marked '**P1**' and '**P2**' respectively and pleaded as part and parcel hereof.

3. The 2<sup>nd</sup> Petitioner is a citizen of Sri Lanka and the Executive-Director of the 1<sup>st</sup> Petitioner above-named.
4. The Petitioners make this Application in the public interest, being cognizant of the fact that according to the Department of Census and Statistics in Sri Lanka women constitute roughly 51.6% of the population in Sri Lanka and contribute to the economic growth of the country. This Application is thus made with the objective of

safeguarding the rights and interests of the general public of Sri Lanka; securing due respect, regard for and adherence to the Rule of Law and the Constitution, which is the supreme law of the land; and with a view to protecting the fundamental rights required to be respected, secured and advanced as morefully set out, hereinafter.

### THE RESPONDENTS

5. The 1<sup>st</sup> Respondent is the Minister of Finance and Mass Media, and is the competent authority to exercise discretion and issue the gazetted provisions sought to be impugned in these proceedings. Accordingly, he is made a party to this application in that official capacity.
6. The 2<sup>nd</sup> Respondent is the Secretary to the Treasury and the Secretary to the Ministry of Finance, and is accordingly made a party to this application in that official capacity.
7. The 3<sup>rd</sup> Respondent is the Hon. Attorney General of the Republic who is made a party to this application as required by law, in terms of Supreme Court Rule 44(3) read with Article 126(2) of the Constitution. No substantive relief is sought against the 3<sup>rd</sup> Respondent.

### BACKGROUND TO THE INSTANT APPLICATION

8. The (then) Minister in charge of the Ministry of Finance and Planning issued Excise Notification No. 666, of the Gazette (Extraordinary) No.69/5, dated 31<sup>st</sup> December 1979.

A copy of Gazette (Extraordinary) No. 69/5 dated 31<sup>st</sup> December 1979 in English is annexed hereto marked as P3 and pleaded as part and parcel hereof.

**Excise Notification No. 666 is contained in 3A to 8A of Gazette (Extraordinary) No. 69/5 dated 31<sup>st</sup> December 1979.**

9. The said Excise Notification *inter alia* prescribed the following restrictions;

**“Paragraph 5** Who may not be employed - The manufacture, collection, bottling, sale or transport of liquor by the following persons and the employment of such persons for the manufacture, collection, bottling, sale or transport of the same is prohibited;

... (V) Male persons under the age of eighteen years **and female persons of any age.** Provided that the Excise Commissioner may in his discretion permit the employment of female persons above the age of eighteen years, only as waitresses in licensed premises specially approved by him for the purpose;

**Paragraph 11** Person to whom liquor is not to be sold or given. - No liquor shall be sold or given ...

(c) to a woman within the premises of a tavern.”  
[emphasis added]

10. The 1<sup>st</sup> Respondent, the Minister in charge of the Ministry of Finance and Media, issued Excise Notification No 2/2018 of the Gazette Extraordinary No. 2053-26 dated 10<sup>th</sup> January 2018.

A copy of Excise Notification No. 2/2018 dated 10<sup>th</sup> January 2018 in English is annexed hereto marked as P4 and pleaded as part and parcel hereof.

Despite several attempts to do so, the Petitioners have not been able to obtain a copy of Gazette (Extraordinary) No. 2053-26 dated 10<sup>th</sup> January 2018 as it was not available as at the date of filing this Application. The Petitioners respectfully reserve their right to submit the said Gazette [marking same as P4(a)] as soon as it is made available and obtained by them.

11. The said Excise Notification No 2/2018 amended the Schedule in the Excise Notification marked as P3 by:

“(1) repealing sub - paragraph (v) of paragraph 5 and substituting thereof with following sub - paragraph,

“ (v) Any persons under the age of eighteen years. ”,

(2) removing sub - paragraph (c) of paragraph 11 , and

(3) renumbering sub - paragraph (d) as sub - paragraph (c) in paragraph 11.”

12. The effect of the said Excise Notification No 2/2018 (P4) was to:

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

13. Thereafter, the Minister in charge of the Ministry of Finance and Media issued Excise Notification No 4/2018 of the Gazette Extraordinary No. 2054-42 dated 18<sup>th</sup> January 2018.

A true copy of Excise Notification No 4/2018 dated 18<sup>th</sup> January 2018 in English is annexed hereto marked as P5 and pleaded as part and parcel hereof.

Despite several attempts to do so, the Petitioners have not been able to obtain a copy of Gazette (Extraordinary) No. 2054-42 dated 18<sup>th</sup> January 2018 as it was not available as at the date of filing this Application. The Petitioner respectfully reserves their right to submit the said Gazette [marking same as P5(a)] as soon as it is made available and obtained by them.

14. The said Excise Notification No 4/2018 amends the Schedule in the Excise Notification No. 666 of the Extraordinary Gazette Notification No.69/5, dated 31<sup>st</sup> December 1979 as amended by Excise Notification No. 02/2018 of the Extraordinary Gazette Notification No. 2053/26, dated 10<sup>th</sup> January 2018.
15. The effect of the said Excise Notification No 4/2018 (P5) is to:
  - (a) Prohibit women above the age of 18 to manufacture, collect, bottle, sell or transport liquor;
  - (b) Prohibit women above the age of 18 from being employed for the manufacture, collection, bottling, sale or transport of liquor; and
  - (c) Prohibit “giving” liquor to “a woman within the premises of a tavern”.

#### INFRINGEMENT OF FUNDAMENTAL RIGHTS

16. The Petitioners state that the aforesaid Excise Notification No 4/2018 (P5) imposes unreasonable and irrational restrictions on women above the age of 18 based solely and completely on their gender/sex and no other consideration.
17. The Petitioners state that the aforesaid steps to place the said disabilities on women above the age of 18, whilst placing no such disability on men above the age of 18, constitute infringement of the rights of a significant segment/class of the People of Sri Lanka, including:
  - (a) A denial and negation of the Equal Protection of the Law (Article 12(1) of the Constitution); and
  - (b) A denial and negation of the right to non-discrimination based on sex (Article 12 (2) of the Constitution).
18. The Petitioners further state that the said unreasonable and irrational restrictions placed by the aforesaid Excise Notification No 4/2018 (P5), in effect imply that women who have attained the age of majority do not possess the capacity and/or right to duly make choices for themselves on whether they should:
  - (a) Manufacture, collect, bottle, sell or transport liquor;
  - (b) Be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor; and
  - (c) Obtain and/or purchase and/or consume liquor “within the premises of a tavern”.

19. The Petitioners state that whether or not any one or more women decide to engage in any one or more of the above mentioned activities, all women who have attained the age of majority and/or who have satisfied the same conditions imposed on men should be free to and/or have the right and/or face no impediments to make the choice for themselves whether or not they should engage in the aforesaid activities.
20. The Petitioners state that, insofar as the aforesaid Excise Notification No 4/2018 (**P5**) takes away from women who have attained the age of majority and/or who have satisfied the same conditions imposed on men the ability to make the choice as to whether they should engage in the aforesaid activities, the aforesaid acts of the 1<sup>st</sup> Respondent entail infringement of the freedom of thought (guaranteed under Article 10 of the Constitution) of a significant segment of the People of Sri Lanka.
21. The Petitioners state that the provisions of the aforesaid Excise Notification No. 4/2018 (**P5**) demean, denigrate and otherwise are designed to belittle women based on their gender as the said provisions are predicated on the notion that:
  - (a) Adult women are inferior to adult men; and
  - (b) Adult women do not have the requisite capacity to properly determine for themselves whether or not to engage in the activities prohibited therein;
22. Furthermore, in the circumstances, the Petitioners respectfully state that the present, continuous and imminent further infringement of the fundamental rights of a significant segment of the People of Sri Lanka [particularly the fundamental rights guaranteed by **Articles 10, 12(1), 12(2)**] is facilitated and permitted by the 1<sup>st</sup> Respondent and/or the State by the aforementioned acts.
23. The Petitioners state that unless Your Lordships' Court makes interim orders restraining the imposition of these restrictions on adult women (which are sought to be prevented through this application), grave and irreparable loss, harm, damage and prejudice would be caused to a significant segment of the People of Sri Lanka.
24. The Petitioners state that unless the infringement of the fundamental rights sought to be redressed through this application is prevented through appropriate interim order(s) by Your Lordships' Court until the hearing and final determination of this application, the Rule of Law itself would be eroded.
25. The Petitioners have made this application with a view to securing due respect and restoration of the ability to exercise the said fundamental rights by the Respondents and from the State the due enjoyment and exercise of that which is imperiled and eroded by the actions impugned through this application.
26. Accordingly, the Petitioners respectfully reserve the right to furnish to Your Lordships' Court such further material, developments, facts or circumstances as may transpire and/or appear relevant to the subject matter of this Application as well as to

add such parties and/or effect any amendment of pleadings as may become or transpire to be necessary.

27. The Petitioners have not previously invoked the jurisdiction of Your Lordships' Court in respect of this matter.
28. An affidavit of the 2<sup>nd</sup> Petitioner is appended hereto in support of the averments contained herein.

**WHEREFORE** the Petitioners respectfully pray that Your Lordships' Court be pleased to:

- (a) Grant the Petitioners leave to proceed with this Application;
- (b) Declare that imposition of the said disabilities on women above the age of 18 by the State constitutes present, continuing and imminent further infringement of the fundamental rights of a significant segment of the People of Sri Lanka guaranteed under **Article 10** and/or **Article 12(1)** and/or **Article 12(2)** of the Constitution;
- (c) Declare that actions of the 1<sup>st</sup> Respondent and/or the State to take away from women above the age of 18 the ability to exercise a choice as to whether they should manufacture, collect, bottle, sell or transport liquor and/or be employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern, constitute present and/or continuing and/or imminent further infringement of the fundamental rights of a significant segment of the People of Sri Lanka guaranteed under **Articles 10** of the Constitution;
- (d) Declare that prohibiting and/or restricting women above the age of 18 by the 1<sup>st</sup> Respondent and/or the State from manufacturing, collecting, bottling, selling or transporting liquor and/or being employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern constitutes present and/or continuous and/or imminent further infringement of the fundamental rights guaranteed under **Article 12(1)** of the Constitution;
- (e) Declare that prohibiting and/or restricting women above the age of 18 by the 1<sup>st</sup> Respondent and/or the State from manufacturing, collecting, bottling, selling or transporting liquor and/or being employed for the purpose of manufacturing, collecting, bottling, sale or transport of liquor and/or obtain and/or purchase and/or consume liquor within the premises of a tavern, based on their gender constitutes present and/or continuous and/or imminent further infringement of the fundamental rights guaranteed under **Article 12(2)** of the Constitution;

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- (f) Declare that Excise Notification No. 4/2018 dated 18<sup>th</sup> January 2018 (**P5**) issued by the 1<sup>st</sup> Respondent is null and void and/or of no force and/or effect in law;
- (g) Make Interim Order(s) restraining and/or preventing and/or suspending the operation and/or implementation and/or enforcement of the provisions of Excise Notification No 4/2018 dated 18<sup>th</sup> January 2018 (**P5**) issued by the 1<sup>st</sup> Respondent until the hearing and final determination of this application;
- (h) Grant costs; and
- (i) Grant such further and other relief(s) as to Your Lordships' Court shall seem meet.

*Sgd. Sinnadurai Sundaralingam & Balendra*

**REGISTERED ATTORNEYS FOR THE PETITIONERS**

Documents annexed to the Petition  
Documents marked 'P1' to 'P5(a)'

*Sgd. Sinnadurai Sundaralingam & Balendra*

**REGISTERED ATTORNEYS FOR THE PETITIONERS**

*Settled by:*

**Luwie Ganeshathan Esqr.,**  
**Ms. Sarita de Fonseka**  
**Viran Corea Esqr.,**  
Attorneys-at-Law