

The Cabinet Decision to Ban Women from Purchasing Liquor is Unconstitutional

Women are permitted to purchase liquor. On 10 January 2018, the Minister of Finance and Mass Media issued Excise Notification No. 02/2018 under the Excise Ordinance, No. 8 of 1912 (as amended). The new Notification amends Excise Notification No. 666 of 31 December 1979, and removes the ban on the sale of liquor to women ‘within the premises of a tavern’.¹ A tavern is usually defined as ‘a place of entertainment...[or] a house for the retailing of liquors to be drunk on the spot’.² Women are therefore entitled to purchase liquor under Sri Lankan law as at 10 January 2018. Moreover, Excise Notification No.666 does not appear to prohibit women from purchasing alcohol in premises that do not constitute a tavern (e.g. supermarkets).

Equality before the law. Article 12(1) of the Constitution states that ‘all persons are equal before the law, and are entitled to the equal protection of the law’. Moreover, article 12(2) states that ‘no citizen shall be discriminated against on the grounds of...sex.’ Therefore, acts that discriminate against women on the grounds of their sex violate their fundamental rights, and are thereby unconstitutional.

Article 16(1) of the Constitution states that ‘all *existing* written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter’ (emphasis added). Article 16(1) only applies to written and unwritten law enacted prior to 1978. Thus any law that is enacted today must be compliant with the fundamental rights chapter of the Constitution, and cannot discriminate on the grounds of sex.

Cabinet decision is unconstitutional. On 16 January 2018 the Cabinet of Ministers unanimously decided to withdraw the above Excise Notification No. 02/2018, which removed the prohibition on the sale of liquor to women within the premises of a tavern.³ This decision serves to prohibit women from purchasing liquor in the premises of a tavern by reinstating the previous ban under Excise Notification No.666 of 1979. The Cabinet’s decision therefore discriminates against women on the grounds of their sex. The new decision dated 16 January 2018, is not protected under article 16(1) of the

¹ Previous clause 11(c) of Excise Notification No. 666 of 31 December 1979.

² Black’s Law Dictionary, Revised 4th Edition, 1968. Available at: <http://heimatundrecht.de/sites/default/files/dokumente/Black%27sLaw4th.pdf> [Accessed on: 17 January 2018].

³ ‘Cabinet decides to withdraw Gazettes on liquor’, *Ada Derana*, 16 January 2018, Available at: <http://www.adaderana.lk/news/45440/cabinet-decides-to-withdraw-gazettes-on-liquor> [Accessed on: 16 January 2018].

Constitution, as it does not fall within the category of '*existing* written law or unwritten law' at the time of promulgating the Sri Lankan Constitution of 1978.

There is an imminent infringement of a fundamental right. Article 126(1) affords the Supreme Court the sole and exclusive jurisdiction to 'hear and determine any question relating to the infringement or *imminent infringement* by *executive or administrative* action of any fundamental right' (emphasis added). The Cabinet decision dated 16 January 2018 falls within the category of 'executive' action.⁴ Moreover, the decision to withdraw Excise Notification No. 02/2018 amounts to an *imminent* infringement of article 12(2) of the Constitution, as the decision will directly result in the Minister of Finance and Mass Media withdrawing the said Notification. Such withdrawal will constitute an infringement of women's rights to equality and non-discrimination guaranteed by articles 12(1) and (2) of the Constitution. Therefore, interested parties anticipating an imminent infringement of their fundamental rights have valid grounds to petition the Supreme Court under article 17 (read with article 126) of the Constitution.

⁴ Sugathapala Mendis and Another v Chandrika Kumaratunga and Others (Waters Edge Case) [2008] 2 SLR 339; Perera v University Grants Commission [1978-79-80] 1 SLR 128 at 137-138, per Sharvananda J, 'The expression 'executive or administrative action' embraces executive action of the State or its agencies or instrumentalities exercising Governmental functions. It refers to exertion of State power in all its forms'.