
IF TERM LIMIT GOES – SO MUST IMMUNITY

CRM statement on 18th Amendment to the Constitution

If the President's term limit is removed, the President's immunity must go too.

Immunity and term limitation are integral parts of the 1978 constitutional package which created the Executive Presidency, and they cannot be separated.

A President's immunity is not for life. It is only for the period that he or she is President. Once a President steps down from office he or she *may be sued like any other citizen for any wrongful act committed while in office.* A powerful deterrent on a President committing an offence while in power is the knowledge that, once his or her terms ends, *which end will be at a time in the foreseeable future,* liability under the normal law of the land will resume. *Justice is not denied to an injured party, it is only postponed.* The 1978 Constitution limited this possible postponement to a maximum of twelve years. This is already long enough for an injured party to wait for redress, for memories to stay fresh, for witnesses to remain available and healthy. Imagine trying to seek justice after a span of eighteen, or twenty-four, or thirty-six years! There may be countries (such as the UK) where the nominal head of state enjoys lifetime immunity; this is passed down from the age of monarchs whose real power has been steadily stripped away. *Is there any democratic society in the world that grants a political head of state, one who wields real political power, such immunity, which may in practice last even a lifetime?*

Under the Prime Ministerial system, a person could be Prime Minister any number of times, and indeed this happened. That was no problem because the Prime Minister did not

enjoy any immunity whatsoever, and nobody ever suggested that this was a hindrance to his or her work. Under the Prime Ministerial system of the 1972 Constitution (but not under the Soulbury Constitution) the nominal head of state enjoyed immunity but the powers attached to the office were negligible. Here again immunity ceased when the President's term, which was four years, ceased. The 1977 amendment and the 1978 Constitution introduced the totally new concept of the Executive President in whom unprecedented powers were vested.

It was the introduction of Presidential immunity that gave many persons grave misgivings about the Executive Presidency when it was first introduced. Some of these fears were slightly assuaged by the two term limit. It is hard to believe that even J.R. Jayewardene would have had the chutzpah to make the present proposal.

It is outrageous that a constitutional change of such serious implications be rushed through the Supreme Court and Parliament as "urgent in the public interest" without people having the chance to discuss this serious issue amongst themselves, for individuals and lawyers to make considered representations to the Supreme Court, and without the Supreme Court itself having time to hear well thought-out and cogent arguments.

The rushing through of the virtual repeal of the 17th amendment to the Constitution is equally astounding but is not adverted to in this short statement. ■

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