

A CONSTITUTIONAL ANALYSIS OF THE SRI LANKAN ANTI-TERRORISM BILL (ATB) AND ITS IMPACT ON HUMAN RIGHTS AND DEMOCRACY

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Introduction

The Prevention of Terrorism Act (PTA) in Sri Lanka, originally designed to combat terrorism, has faced widespread criticism for its misuse, particularly in suppressing political activism.² The law allows for detention without charge for up to 18 months, often targeting minority groups, protesters, and political opponents. Prominent figures, including student activist Wasantha Mudaliage (2022)³, civil rights defender Hijaz Hizbulah (2020)⁴, and poet Ahnaf (2017)⁵, have been detained under the act, raising concerns about its role in stifling dissent. There have also been numerous reports of torture, forced confessions, and other ill-treatment of detainees under the PTA. Even political figures such as Sarath Fonseka have been subjected to its provisions, further highlighting the law's potential for political manipulation⁶. The PTA's application, often arbitrary, has led to fears

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² C L C M Patabendige, Prevention of Terrorism Act; Striking a Balance between Conflicting Interests <https://www.defence.lk/Article/view_article/27016> Accessed on 2024.11.01.

³ Front Line Defenders , <<https://www.frontlinedefenders.org/en/case/human-rights-defender-and-student-leader-wasantha-mudalige-cleared-all-terrorism-charges-under>> accessed on 2024.11.01.

⁴ Lanka Truth, <<https://lankatruth.com/en/>> Accessed 2024.11.03.

⁵ The Leader, <<https://lankaleader.lk/news/6957-poet-ahnaf-jazeem-arrested-under-pta-acquitted>> Accessed 2024.11.03.

⁶ Politics of Transitional Justice, <<https://www.diva-portal.org/smash/get/diva2:1440172/FULLTEXT01.pdf>> Accessed 2024.11.03.

that it is used more as a tool of control and intimidation rather than as a legitimate counterterrorism measure.

Despite international calls for reform and repeal, the PTA continues to be a powerful tool for silencing opposition and undermining human rights in Sri Lanka. The on-going use of the PTA highlights the urgent need for legal reform to protect citizens from arbitrary detention and torture, and to ensure that fundamental rights are upheld in the country. In 2018, the Sirisena administration presented the Counterterrorism Act, but the public rejected it due to human rights concerns.⁷ Following the 2019 Easter attack, Sri Lanka's new government promised to repeal the PTA through new legislation without infringing on constitutional rights or international law obligations. A special committee presented the anti-terrorism bill to the legislature. During the writing stage, the proposed committee did not distribute the bill to the public or legal experts in order to solicit their thoughts – this is one of the bill's main flaws.⁸ Since government openness and transparency are essential elements of the rule of law, the process of drafting this bill damaged them. Still, on January 10, 2024, the Minister of Justice submitted the September version of the ATB to Members of Parliament.⁹ Also the Anti-Terrorism Bill in Sri Lanka has to be amended to conform to the 1978 Constitution in light of the Supreme Court's recent verdict. So the Anti-Terrorism Bill (ATB) may become law if the Parliament approves and changes it according to constitutional norms.¹⁰

The Anti-Terrorism Bill (ATB) and Its Impact on Human Rights and Democracy

The ICJ has criticized Sri Lanka's revised Anti-Terrorism Bill, highlighting its overbroad provisions, particularly regarding "encouragement of terrorism" and "dissemination of terrorist publications," which risk human rights violations. While some

⁷ Dilruwan Vithanage, Saman Gunadasa, Sri Lankan government prepares new anti-terrorism laws, <<https://www.wsws.org/en/articles/2019/04/09/ctas-a09.html>> Accessed 2023.11.14.

⁸ FACE THE NATION | The Anti-Terrorism Act: Good, Bad, or Ugly?, <<https://www.youtube.com/live/ErcvUzEMwR4?feature=share>> Accessed 2023.11.14.

⁹ News first, Sri Lanka Unveils Revised Anti-Terror Bill After Backlash, <<https://www.newsfirst.lk/2024/01/10/sri-lanka-unveils-revised-anti-terror-bill-after-backlash>> accessed on 2024.11.11.

¹⁰ Parliament news <<https://www.parliament.lk/en/news-en/view/3906/?category=6>> accessed on 2024.11.12.

positive changes were made, the bill still fails to meet international human rights standards and requires further revision.¹¹

The definition of "offenses of terrorism" in the ATB is unclear and includes ambiguous language.¹² The sovereignty of the people is violated by such a concept. The ATB was reviewed by the Bar Association of Sri Lanka, and the BASL declared that several of its provisions—specifically, 3¹³, 4¹⁴, 10¹⁵, 11¹⁶, 13¹⁷, 14¹⁸, 15¹⁹, 16²⁰, 28²¹, 30²², 31²³, 36²⁴, 82²⁵, 83²⁶, 84²⁷, 85²⁸ and 86²⁹ infringe upon people's basic rights and the criminal justice system. Additionally, the measure violates people's autonomy rights, which are a hallmark of constitutionalism.³⁰

Clause 9³¹ criminalizes individuals who gather confidential information with the intention of supplying it to someone or who believe it will be used to commit an offense. This clause impacts media and human rights activism, restricting public expression and violating Constitutional Article 14(a)³² of freedom of expression and assembly,

¹¹ ICJ, Sri Lanka: Revised version of anti-terror bill threatens human rights, <<https://www.icj.org/sri-lanka-revised-version-of-anti-terror-bill-threatens-human-rights/>> accessed on 2024.11.11.

¹² Rebecca Root, Freedom of expression: Sri Lanka's 'overbroad' draft terrorism law threatens human rights, <<https://www.ibanet.org/Sri-Lanka-overbroad-draft-terrorism-law-threatens-human-rights>> accessed on 2024.11.11.

¹³ Anti-Terrorism Bill (2023), cl 3.

¹⁴ ibid, cl 4.

¹⁵ ibid, cl 10.

¹⁶ ibid, cl 11.

¹⁷ ibid, cl 13.

¹⁸ ibid, cl 14.

¹⁹ ibid, cl 15.

²⁰ ibid, cl 16.

²¹ ibid, cl 28.

²² ibid, cl 30.

²³ ibid, cl 31.

²⁴ ibid, cl 36.

²⁵ ibid, cl 82.

²⁶ ibid, cl 83.

²⁷ ibid, cl 84.

²⁸ ibid, cl 85.

²⁹ Anti-Terrorism Bill (2023), cl 86.

³⁰ The Island Online, <<https://island.lk/basl-claims-certain-provisions-of-ata-contravene-legal-rights-of-citizens>> accessed on 2024.11.10.

³¹ Anti-Terrorism Bill (2023), cl 9.

³² The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.14 (a).

while also violating people's sovereignty and self-determination. Clause 10³³ of the ATB in Sri Lanka prohibits public gatherings for reasonable purposes, violating Article 14(b)³⁴ of the constitution and violating people's sovereignty and autonomy rights. The bill, which was imposed on the government in March 2023, aims to prevent trade unions from assembling and expressing their opposition to the government's actions, thereby promoting racism and violating public gathering rights.³⁵ The bill to reintroduce the death penalty for terrorism-related offenses, as proposed in Section 4(1) (a)³⁶, threatens to violate the Sri Lankan Constitution's Article 11³⁷ and Article 12³⁸ rights, as well as the right to life. This move raises concerns about the erosion of human rights protections, particularly in relation to international human rights standards, including Sri Lanka's obligations under the International Covenant on Civil and Political Rights.

Clause 49(1)³⁹ of the bill, which allows the military to be involved in law enforcement, violates key principles of democratic policing by further militarizing law enforcement and effectively creating a de facto state of emergency. By permitting the military to detain individuals for up to 24 hours without immediate police involvement or judicial oversight, the provision undermines protections against torture and inhuman treatment, as guaranteed under Article 11⁴⁰ of the Constitution. It also breaches the fundamental principle of civilian control of the military, which is a cornerstone of constitutionalism, leading to an undue concentration of power in the hands of the military and executive authorities, thus weakening democratic safeguards.

Clause 30⁴¹ of the bill grants the DIG of Police the authority to issue a detention order for up to one year, with the possibility of extension,

³³ Anti-Terrorism Bill (2023), cl 10.

³⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.14 (b).

³⁵ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.14 (1).

³⁶ Anti-Terrorism Bill (2023), cl 4 (a).

³⁷ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.11.

³⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.12

³⁸ Anti-Terrorism Bill (2023), cl 22(1) (c).

³⁹ Anti-Terrorism Bill (2023), cl 49.

⁴⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 11

⁴¹ Anti-Terrorism Bill (2023), cl 30.

without judicial oversight or trial. This provision could lead to prolonged detention without charge, potentially violating individuals' right to a fair trial and freedom from arbitrary detention, as guaranteed by Article 13(1)⁴² of the Sri Lankan Constitution. Furthermore, it concentrates significant power in the hands of the police, bypassing the judiciary and undermining the separation of powers that is central to a democratic system. Similarly, Clause 22(1) (c)⁴³ gives police officers, the armed forces, and the coast guard broad powers to arrest and search individuals or premises based on reasonable grounds. This expansion of law enforcement powers risks infringing on the rule of law, a core principle of constitutionalism, by providing excessive discretion to the authorities without sufficient safeguards. Both provisions potentially undermine civil liberties, leading to arbitrary detention, militarization of policing, and concentrated power within the executive, threatening the fundamental rights of individuals.

Clause 28 (2) (a)⁴⁴ and 28 (2) (b) (i)⁴⁵, (ii), and 28 (2) (b) (iii)⁴⁶ mandate courts to follow police instructions, while Clause 66 (1)⁴⁷ permits police officers to apply to magistrates for access to data or information exchange systems, violating Article 3⁴⁸ of the constitution, which governs law and individual rights. Clauses 14⁴⁹, 44⁵⁰, 82⁵¹, 83⁵², 100⁵³ of the bill raise concerns about the concentration of executive power and a violation of the separation of powers principle, which is a core element of constitutionalism. These provisions grant the executive branch significant authority without sufficient checks and balances, undermining democratic accountability and individual rights. By consolidating power in the hands of the executive, these sections reduce the role of the legislature and judiciary, thereby weakening people's sovereignty and the ability of citizens to hold the government accountable. Additionally, such unchecked powers could lead to abuses of authority and the

⁴² The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.13 (1).

⁴³ Anti-Terrorism Bill (2023), cl 22 (1) (c).

⁴⁴ ibid, cl 28 (2) (a).

⁴⁵ ibid, cl 28 (2) (b) (i).

⁴⁶ ibid, cl 28 (2) (b) (iii).

⁴⁷ ibid, cl 66 (1).

⁴⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art.3

⁴⁹ Anti-Terrorism Bill (2023), cl 14.

⁵⁰ ibid, cl 44.

⁵¹ ibid, cl 82.

⁵² ibid, cl 83.

⁵³ ibid, cl 100.

infringement of basic freedoms, such as freedom of movement and due process, threatening the balance of power central to the rule of law.

Comparison with Other Country Terrorism Statutes

The South African Anti-Terrorism Act (ATA) appears to limit the powers of the police in certain ways, ensuring that there are checks on their authority. For instance, Section 6⁵⁴ of the bill curbs police powers, suggesting a more balanced approach in the exercise of law enforcement. In contrast, Sri Lanka's Anti-terrorism Bill provides the police with broader, more discretionary powers.

Section 9(1)⁵⁵ of the South African ATB mandates that when a person is arrested, they must be informed of the reason for their arrest. This is similar to Section 43(A)⁵⁶ of India's Prevention of Terrorism Act, which also requires the arrested person to be informed of the grounds for arrest "as soon as possible." However, in Sri Lanka, the police do not have to disclose the reasons for arrest right away, as an arrest warrant can be issued by the Deputy Inspector General (DIG) of Police without any immediate requirement to inform the person of the grounds for arrest.

Additionally, Section 9(2)⁵⁷ of the South African ATA requires that anyone who is arrested must be brought before a judge without unreasonable delay. This ensures immediate judicial oversight of the arrest. In contrast, Sri Lanka's law does not require the arrested individual to be brought before a judge promptly, allowing for longer periods of detention without judicial review.

Section 10⁵⁸ of the South African ATA requires the police to inform the arrested person's family immediately. In contrast, Sri Lanka's ATB allows the armed forces to notify the family within 24 hours of an arrest.

Recommendations

⁵⁴ South African Anti-Terrorism Act (ATA) 1967, s 6.

⁵⁵ South African Anti-Terrorism Act (ATA) 1967, s 9 (1).

⁵⁶ Indian Prevention of Terrorism Act 2002, s 43 (A).

⁵⁷ South African Anti-Terrorism Act (ATA) 1967, s 9 (2).

⁵⁸ South African Anti-Terrorism Act (ATA) 1967, s 10.

1. The Anti-Terrorism Bill should be repealed, and a new piece of legislation should be enacted under the name National Security Act to address Sri Lanka's national security concerns. This new statute should be designed to safeguard fundamental rights, ensuring the protection of the right to a fair trial, freedom from arbitrary detention, as well as protection against torture or cruel treatment. It must also uphold essential freedoms, including the freedom of expression, movement, and privacy, while preventing any form of discrimination against individuals.
2. Enact a new National security statute that specifically defines terrorism as follows “Terrorism is defined as any illegal act or threat of violence, including attacks enabled by cyberspace or Artificial intelligence (AI), carried out with the purpose of seriously intimidating or harming the public, forcing the government or international organizations to act against legal or constitutional processes, or destroying the nation's political, economic, social, constitutional, or environmental stability while wilfully ignoring democratic values, human rights, and the rule of law”.
3. The Act should mandate that any person arrested under terrorism offences be presented before a magistrate within 24 hours of arrest, excluding reasonable travel time. This upholds judicial oversight, prevents arbitrary detention, and aligns with international human rights standards.
4. The Act should include a provision requiring authorities to immediately inform a close family member or chosen contact of the arrested individual upon their detention under terrorism-related charges. This ensures transparency and safeguards the detainee's fundamental rights.

Conclusion

The Anti-Terrorism Bill (ATB) in Sri Lanka raises significant concerns regarding human rights and democratic principles. Its broad, vague definitions of terrorism, coupled with provisions that grant excessive powers to the military and police, threaten fundamental freedoms and constitutional rights. Provisions such as arbitrary detention, lack of judicial oversight, and militarization of law enforcement further undermine the rule of law and accountability. Drawing comparisons with more balanced approaches in countries like South Africa, it is clear that Sri Lanka's ATB requires substantial revision to ensure it aligns with international human rights standards. To protect citizens from abuse of power and safeguard their freedoms, the ATB should be repealed and replaced with a National Security Act that balances

national security concerns with fundamental rights. Transparent legislation, clear definitions, and judicial safeguards are essential to uphold the democratic values of Sri Lanka.