

Countering Terrorism: Striking a Balance Between National Security and Human Rights

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Abstract— Domestic, as well as international audience, criticizes the Prevention of Terrorism Act. The provisions of PTA are regarded as discriminatory, breaching human rights law as well as fundamental rights. However, the purpose of PTA is to ensure national security by combating terrorism. Therefore, it is imperative to strike a balance between the interests of National Security and Human Rights. The research is library-based research, which is also known as doctrinal research. It has used existing sources to arrive at conclusions. Both primary sources and secondary sources are equipped. The paper discusses the strengths and weaknesses of the PTA. The Act itself has inconsistencies as well as lacunas, which is detrimental to national security. The paper addresses the drawbacks accordingly, proving the necessity of upholding national security whilst adhering to international standards and protecting human rights. Consequently, the paper has provided an array of recommendations.

Keywords— *national security, human rights, terrorism*

I. INTRODUCTION

The Prevention of Terrorism Act came into effect in 1979 as a temporary measure. ‘Modelled on South Africa’s apartheid-era legislation and laws that the British used against Irish militancy, the PTA became a permanent law in 1982.’ Ever since enactment, Act received criticism over appreciation. The objective of the Act is ‘to make temporary provision for the prevention of acts of terrorism in Sri Lanka, the prevention of unlawful activities of any individual, group of individuals, association, organization or body of persons within Sri Lanka or outside Sri Lanka and matters connected therewith or incidental thereto.’ The Act has strengths as well as weaknesses. Simply stating, Act obstructs terrorism and extremism by protecting national security. The laws relating to emergencies such as laws on detention and examination of suspects facilitates the justice

process by paving the way to criminalize the acts of perpetrators. Nonetheless, there are controversial provisions in the Act, which is detrimental to human rights. These provisions have created unrest in the international audience. The often-cited claims by the countries are the vast powers bestowed on the minister, coerced confessions, the deprivation of the right to a fair trial and prolonged detention period.

II. METHODOLOGY

The research is doctrinal research, which is also known as a “knowledge building research”. Research has been aided by primary sources as well as secondary sources. Primary sources such as domestic and international legislation and secondary sources such as books and journal articles are equipped.

III. DISCUSSION

A) *Legal standards*

1) *International legal regime*: Sri Lanka is a state party to International Covenant on Civil and Political Rights (ICCPR) as well as the Convention against Torture and other Cruel Inhuman Degrading Treatment or Punishment. Both the conventions recognise the right to life. Article 4(1) of ICCPR states that ‘Even when there is a state of emergency, where states may derogate from certain other rights, such derogation must be temporary and only what is strictly required by the exigencies of the emergency’. Therefore, the use of force should reciprocate to the threat posed by terrorists. As Sri Lanka is a country that has ratified the aforementioned conventions, the government is duty-bound not to breach the statutorily vested rights. This depicts the need to strike a balance between the conflicting interests. National security must be preserved in the meantime, human rights should be preserved abiding with international standards.

2) *Domestic legal regime*: The Constitution of the Democratic Socialist Republic of Sri Lanka, the supreme Law of the country bestows plethora of

rights to its people. Article 11 is an absolute right, which cannot be infringed. It states that 'no person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment'. Therefore, even a perpetrator, suspect, accomplice or bystander must not be subjected to torture during detention or at any time. Article 12, 13 (1), 13(2) and 14 are subjected to restrictions as stipulated in Article 15(7). Article 12 states on right to equality of all persons. Article 13(1) states that 'no person shall be arrested except according to the procedure established by law, any person arrested shall be informed of the reason for his arrest. Article 13 (2) states that 'every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge and shall not be held in custody, detained or deprived of personal liberty. Article 14 is on freedom of speech, assembly, association, occupation. Nonetheless, the mentioned rights are limited 'in the interest of national security, public order and the protection of public health or morality, or to secure due to recognition and respect for the rights and freedoms of others, or of the meeting the just requirement of the general welfare of a democratic society. This explicitly displays the significance of national security where fundamental rights will be restricted to preserve national security.

B) *Strengths and weaknesses*

1) *Strengths*: The problem arises whether PTA is exclusively adverse. In reality, PTA serves as the platform to penalise criminals and attain justice. This was seen during Easter Sunday Attack 2019 as well as during the war against Liberation Tigers of Tamil Eelam (LTTE). The Act vests power in the police to search premises, seize goods and detain the suspects. The Act Penalizes terrorism deters terrorism, combats future terrorism and terrorist-related activities. It is significant to mention that Act has not defined Terrorism, some scholars argue on behalf of inclusion of the definition to the terrorism while some find it as limiting the scope of the Act. Irrespective of the prevalent debate, the Act is on condemnation of all acts of terrorism regardless of circumstances, forces that committed them, location, time, and method of execution.

In cases of Money Laundering as well as in terms of terrorist financing early detention of the perpetrator is essential. Even though detention law is subjected to controversy, there exists an array of advantages. Revealing the motive behind the crime, accomplices to the crime, mode of committing the

crime will be revealed by the suspect with time. Due to the complicated relationships with fellow criminals, suspects will seldom disclose the terror ties. Therefore, detention is imperative to examine the suspect and identify the web of violence. Nevertheless, the prolonged detention period of the PTA was subjected to criticism especially in the recent European Parliamentary Resolution. Declining the allegations against the PTA in whole is not a prudent choice. Special care and attention are needed to the premises of detention. Therefore, the place of detention must not be a harbour of violence where human rights as well as fundamental rights are contravened. Hence, detention centres must be free from police brutality. In addition, the government is duty-bound to ensure human rights.

2) *Weaknesses*: The PTA provides immunity for the government if it is deemed to have been acting in good faith or fulfilling an order under the Act. For that reason, if police in the detention centres act violently, but use the argument of performing duties perpetrators become a victim of violence and rendering justice becomes a failure. To put it simply, powers vested in the police must not be exploited.

Even though the law is specifically intended to prevent terrorism, many people with no connection to terrorism or terrorist groups or connection by coincidence can be arrested under the Act. The PTA is in favour of the police. Due to this, reason when there is a need to detain a person police tend to use the PTA. In such circumstances, all the assets and money of the suspects will be seized and travel bans will be imposed. Nevertheless, if the person is a suspect who was subject to prolonged detention without committing any offence, the damage done to the person will be irreparable. Therefore, investigation of the case, examination of witnesses, documents and evidence must be flawless.

As per the PTA, the Minister is given broad powers to make regulations. 'Violent extremist religious ideology Regulations No 01 of 2021 on March 2021 expanded the PTA allowing for two years of detention without trial for causing 'religious, racial, or communal disharmony or feelings of ill will between communities to be 'rehabilitated' at 'reintegration centres'. This restricts freedom of expression and association with no right of appeal in courts and therefore it is detrimental to human rights as well as civil liberty. Thus, it is crucial to ensure nonviolence in the detention centers and to strike a balance between conflicting interests.

C) Lessons learnt

1) LTTE

Sri Lanka endured a three-decade war with one of the world's notorious terrorist organizations LTTE, which is proscribed by many nations. Even aftermath of gaining peace there is a revival of violence. LTTE international networks, as well as LTTE sympathetic organisations, are alleging Sri Lanka of having committed a 'Tamil Genocide'. This allegation must not be taken trivially. It is important to combat the recent trend of the spread of terrorism in social media. The mechanism to address such an issue is by way of PTA. The recent arrest cases of youth spreading hate speech via Tik Tok, Facebook are a fine example of the necessity of PTA. It is crystalline that Individual liberty is important; however, association, engagement and assembly should not promote violence, terrorism and extremist ideologies.

2) Easter Sunday Attack 2019: 'Easter Sunday's devastating jihadist bombings killed more than 250 and injured roughly twice as many'. The attack was a huge security failure in Sri Lanka, which resulted in an irreparable damage. This affirmed the necessity of having strict national security laws. Relaxation of rules relating to national security became a mockery with the Easter Sunday attack. It also proved that violence could be reoccurred. Islamist extremism is an emerging threat in the world. Sri Lanka being a multi-ethnic, multi-cultural and multi-religious country is vulnerable to violence. Therefore, national security must not be traded at any cost. The burden is on the government to strike a balance between conflicting interests whilst abiding with international standards.

3) The European Parliament resolution

The European Parliament resolution of 10th June 2021 for Sri Lanka, in particular, the arrests under the PTA (2021/2748(RSP)) was passed with an overwhelming majority. The European parliamentary resolution warned against the removal of Generalised System of Preferences Plus (GSP+). GSP+ removes imports duties from products coming into the European Union market from vulnerable developing countries. Irrespective of the fact the resolution is not binding we cannot exclusively negate its impact. In reality, it is authoritative. The loss of GSP+ will be injurious to Sri Lanka's economy. For that reason, Sri Lanka cannot take the warning trivially. National Security is paramount; therefore as a sovereign country

imposing strict laws is essential at times. However, the challenge lies in balancing human rights with national security whilst adhering to the international standards. It is important to consider amending discriminatory as well as arbitrary provisions in the PTA for the betterment of human rights.

IV. CONCLUSION

As discussed it is clear that Act has both flaws as well as strengths. Passive acceptance of allegations by other countries will not be a prudent choice. However, the way towards success is accepting flaws and mending mistakes. When paying attention to other countries it is evident that there are countries with strict national security laws. Switzerland is such a country with wide powers vested in the police. The rationale behind imposing strict rules is to ensure the safety of the majority of citizens. PTA's rigidity became the mechanism to implement laws and to penalize perpetrators during times of terror in Sri Lanka. It is due to the Act, Easter Sunday perpetrators as well LTTE terrorists were imprisoned. The Act paved the way to detain and investigate extremists who were a threat to national security. Therefore, repealing the Act is futile as well as inappropriate. Nevertheless, it is important to accept the bitter truth, which is, Act has provisions, which needs to be revisited imminently. For example, rights including the right to a fair trial must be addressed leading to an effective remedy, access to health care and access to loved ones must not be taken as insignificant requests. On the other hand, Act must include mechanisms to identify and counter modern threats.

V. RECOMMENDATIONS

Prevention of terrorism cannot be achieved overnight; it is a lifelong challenge that is subjected to change. Terrorists change their patterns as well as strategies to spread violence and extremism. Therefore, imminent steps must be taken to prevent offences.

1) Revisiting provisions: The Act does not cover 'Civilian deaths' it only covers special personnel. This is a major lacuna in the Act. It is pivotal to prevent coerced confessions. A threat, intimidation, violence must not be entertained to elucidate confessions as it breaches human rights and international standards.

2) Cyber command: Threat patterns should be constantly monitored to prevent threats by

foreseeing them. For this, it is essential to be vigilant 24/7. At present context, the presence of security personnel and intelligence service provides a remarkable role. Yet, in modern-day warfare, social media is used as a platform to promote terrorism and extremism. By examining hate speech, false news and misinformation disseminated online, the government can prevent violence beforehand by notifying relevant authorities. Cyber command with the affiliation of the Ministry of Defence and relevant ministries can counter threats by presenting counter-narratives as well as impeding upcoming physical violence to preserve national security. Therefore, it is essential to respond to novel trends of terrorism.

3) *Interagency platform*: It is pivotal to share knowledge and expertise between ministries as well as institutes. Furthermore, maintaining a repository of information to counter-violence will be a smart move. Seeking assistance from foreign countries, accessing knowledge and human resources will aid the security process. The platform must go beyond exchanging knowledge and it should facilitate training as well as research and development leading to grooming of a responsible and capable officer who is an investment to the nation.

4) *Rehabilitation process*: Penalizing the terrorist or the religious extremists who incited hatred and violence will not end the vicious cycle of terror. It is important to take a step beyond. Reintegration of perpetrators into society is imperative. Therefore, perpetrators must be directed to rehabilitation. It is also crucial to ensure that rehabilitation centres are free from torture. One of the significant factors is the need for a follow-up mechanism to ensure that the ex-terrorist or the extremist is de-radicalised.

5) *Detention centres*: The PTA must have assurance, that detention centres are not a harbour to share information and tactics of terrorism and radicalize themselves, nor should it be a place where perpetrators are abused. There must be a monitoring mechanism to guarantee nonviolence. As police are bestowed with wide powers, it is crucial to ensure that police will not exploit the powers and infringe the rights of the criminals.

6) *Protection of human rights whilst upholding national security*: The major challenge the government is posed with, is balancing the conflicting interests. National security is essential and should not be traded at any cost; on the other hand, in the name of national security human rights

must not be violated. The government needs to strike a balance between the two conflicting interests without derogating any of the concerns while adhering to international standards.

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