

# Prevention of Terrorism Act; Striking a Balance between Conflicting Interests

*C L C M Patabendige*

*Presented at International Research Conference 2021, General Sir John Kotelawala Defence University on 10<sup>th</sup> September 2021*

Prevention of Terrorism Act (PTA) came into effect in 1979 as a temporary measure during the conflict with The Liberation Tigers of Tamil Eelam (LTTE) and it was later made permanent in 1982. Since the enactment of the PTA, it was criticized as a brutal piece of legislation. The criticism of PTA is not only by locals but also by other nations. The Act has both strengths and weaknesses. The challenge concerning the PTA is to balance individual rights and national security interests meanwhile adhering to international standards.

The European Parliament resolution of 10<sup>th</sup> June 2021 on the situation in Sri Lanka, in particular, the arrests under the Prevention of Terrorism Act (2021/2748(RSP)) was alarming. “Resolution passed with an overwhelming majority in the European Parliament [which] will exert pressure on the European Commission, the executive branch of the European Union which is responsible for determining which countries get Generalized Scheme of Preferences Plus”. Irrespective of the fact that resolution is not binding we cannot exclusively negate its impact. In reality, it is authoritative. The loss of GSP plus will be injurious to Sri Lanka’s economy. On the other hand, there are discriminatory provisions in PTA, which are pointed out in the resolution. As per the resolution, PTA should be repealed as police have broad powers to search arrest, and detain civilian suspects. It further states that there are human rights violations of detainees by torture, sexual abuse, forced confessions, and systematic denial of due process. It is pivotal to protect human rights and uphold rule of law whilst deterring violence.

There are flaws in PTA; it infringes constitutionally vested rights including freedom from right to be free from torture, arbitrary arrest, detention and punishment, and the right to a fair trial. Certain Fundamental rights can be restricted in the interests of national security and public order.

Therefore, human rights must not be breached. Another drawback in the Act is, coerced confessionary statements elucidated by suspects, which is against the law. The burden vested on the accused to prove he is not guilty is criticized immensely. Government is duty-bound to balance civil liberty and national security interests. It is crystalline that national security, which is the security of the majority, must always take the upper hand when compared to one individual. Nevertheless, the challenge is to strike a balance.

The loopholes in the Act fail the purpose of the Act. The Act does not define terrorism as resulting in vagueness. As per PTA, the minister is given the power to make regulations. Regulations No. 01 of 2021 on 9 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". Such prolonged detention is unreasonable, if the person is innocent it is an irremediable injustice done to the person. It is imperative to PTA to ensure rehabilitation and reintegration centers are not a platform of violence. The PTA must have assurance, that detention centers are not a harbor 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.

The problem arises whether PTA is exclusively adverse. The strictness of law when searching terrorists and terrorists suspect, seizure of goods comes handy in times of terror. However, the hurdle is to achieve nonviolence in the meantime to preserve human rights. Combating terrorism cannot be achieved overnight. Terrorism does not always appear from weapons and bullets. Modern warfare is now heading towards information, where extremists, as well as terrorists, are using and manipulating, fabricating, concealing information. This is severe than traditional warfare where the results are seen after a long duration by then the situation is irreparable. It goes beyond traditional warfare where humans are killed and property is destroyed; here the mind game is strong it encroaches past, present as well as future. Usage of social media is vast and information can be disseminated easily with less cost. With the usage of social media such as Twitter, WhatsApp, Tik Tok, and Facebook by extremists, as well as terrorists, they can gather people unlike in the past where ideologies will be preached in gatherings. Therefore, PTA must

have laws to penalize offenders who use hate speech, false information to promote extremism and terrorism.

PTA must be in line with international standards. Sri Lanka is a state party to the International Covenant on Civil and Political Rights (ICCPR), as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Both these conventions advocate rights including the right to life. Counter-terrorism law must be sensitive enough not to breach international standards. Rule of law must be preserved by the criminal justice system. Article 4(1) of the ICCPR is noteworthy; it states that even in such a declared 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. In essence, it suggests the importance of rights, which is enshrined in the constitution and the need to prevent their infringement.

The warning on removing GSP plus cannot be taken mildly, that does not mean that we have to hold heartedly and passively accept all the changes suggested by the international community. Thus, the way towards success is accepting flaws, mending mistakes. Do we have to repeal the PTA as a whole? The answer is no, the rationale is Sri Lanka underwent terrorism and fought a war and regained peace, it was during war and aftermath of war the Act became assistance to penalize the perpetrators, without the said Act we will never be able to penalize the terrorists, nor we will achieve freedom. When looking at countries like Switzerland, the counter-terrorism law grants police enormous powers in the interest of national security.

With that when we move on to the harsh reality, the Act has discriminatory provisions and needs revisiting. The right to a fair trial must be addressed leading to an effective remedy; prolonged detention without a reason must not be tolerated. Access to health care, access to loved ones must not be taken as insignificant requests. Most importantly, Act needs to include rehabilitation, as a measure to combat terrorism, as penalizing is insufficient; reintegrating a person is a prudent choice as it gives a second chance to the victim. Furthermore, it is important to de-radicalize the perpetrators of terrorism to ensure peace in society by prohibiting the revival of terrorism. Most importantly, it is imperative to be sensitive to new threats such as acts of terrorism by social media, which is discreet and harmful.

The unforgettable lesson Sri Lanka learned is from the Easter Sunday Attack, which was inexcusable, is the security failure of the country that resulted in irreparable damage. This reiterates the point of significance on national security, which means national security must always get due to recognition and national security, cannot be taken simply. It is high time to revisit the Act as we have an old Act that does not address modern threats and requirements. Therefore, it is appreciated to take a step back, accept the mistakes, and mend them. In essence, national security must be given priority whilst adhering to international standards, rule of law, and international human rights law is mandatory.



*C L C M Patabendige is a Honorary Associate Research Fellow at the Institute of National Security Studies (INSS), the premier think tank on National Security established under the Ministry of Defence. The opinion expressed is her own and not necessarily reflective of the institute.*