



## DEFINING “TERRORISM” PROBLEMATIC INTERPRETATIONS OF “ACT OF TERRORISM” IN PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT OF SRI LANKA

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### ABSTRACT

Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (PTA), particularly following the Easter Attacks, has initiated much debate and discussion in Sri Lanka and the international sphere, in terms of its various controversial aspects. As a legislation set in the late 1970s and subjected to least judicial supervision, the PTA is often perceived as a “draconian law” that promotes political repression, resulting in grave violations of human rights and individual liberties. One of many such inadequacies in the PTA is the lack of a specific definition as to what acts or omissions constitute an “act of terrorism”. Such a law with a critical legislative gap is a severe threat to the individual liberties and rights of the citizens. The recent past provides sufficient evidence of opposite political pressure, political otherness and discord being brought within the purview of “terrorism”, posing a grave danger to rights and liberties as well as the confidence in the law. Hence, this paper examines the potential threat posed by the above discussed legislative gap to the rights and freedoms of the citizens. Further, in relation to international legislations, treaties and conventions, the paper presents the legal elements that should be considered in bringing an act within the scope of “terrorism”. Consequently, the paper identifies the importance of a profound investigation of the *mens rea* – both initial and ultimate – for a broader understanding of the “intention” of the act, followed by an evaluation of the magnitude of its impact in terms of socio-economic, cultural and, political consequences, in bringing an act within the purview of act of terrorism. Concluding the discussion, the paper emphasizes the importance of establishing and finetuning the definition of “act of terrorism” in the interest of the state and the individual.

**Keywords:** Terrorism, PTA, Interpretation, Human Rights, Fundamental Rights

### I. Introduction

As a country that survived several armed struggles, including the most recent experience of a violent civil war involving the Liberation Tigers of Tamil Eelam (LTTE), in Sri Lanka, “terrorism” is a term that terrifies the whole nation. During the period of the civil war, the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 (hereinafter referred to as PTA) was primarily the most frequently utilised legislation against those who were involved in “terrorist” activities. However, the application of the provisions of the PTA almost 12 years

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since the end of the civil war, particularly in relation to some incidents that took place in the aftermath of the Easter Sunday Bombings on April 21, 2019, has been perceived by many human rights activists and organisations as an unjustifiable attempt to curtail human rights and personal liberties. One of the gravest allegations against the PTA has been the lack of a specific definition as to what constitutes an “act of terrorism”, for it to be brought within the purview of the PTA. This grave legislative gap has the potential of being employed as a tool to suppress the voice and rise of the political, cultural and religious “others”, by somehow bringing such strong oppositions – or “otherness” – under the purview of “terrorism”. A legislation to prevent terrorism, with “act of terrorism” undefined, implicitly makes arbitrary arrests, torture and circumvention of due procedure by the officials possible, under the pretext of fighting terrorism. Hence, this paper intends to identify and examine the inconsistencies and gaps in the current interpretation of an “offence” or an “act of terrorism” under the PTA, in comparison with the international legal background on terrorism, in order to narrow such gaps and fine-tune the mainframe of the PTA, so that it best serves the intended purpose, while preserving the individual rights and liberties of the citizens of Sri Lanka.

## **II. What constitutes an “act of terrorism”?**

Despite the intense impact terrorism has made internationally, no final definition of terrorism has been arrived at or agreed upon so far, mainly since the term itself is highly political, and the observer relative; a “freedom fighter” for an outsider may be a “terrorist” to the political leadership or the citizen who experienced the brutality of such violence. Nevertheless, followed by the globally condemned September 11, 2001 attacks, various international organisations and states have made several attempts to identify at least certain specific characteristics of an act that bring it under the spotlight of “terrorism”.

Article 2(1)(b) of the United Nations International Convention for the Suppression of the Financing of Terrorism, defines terrorism as “any...act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to

abstain from doing any act.”<sup>1</sup> The United Nations Security Council Resolution 1566 of 2004 reiterated that terrorism involves “criminal acts, against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act,...[and they]...are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature”.<sup>2</sup>

The European Union has also made attempts to define “terrorism” to support the legal framework of preventing terrorist activities internationally and within the states of the Union. Article 1 of the Framework Decision 2002 on combating terrorism dictates that the “intentional acts..., which, given their nature or context, may seriously damage a country or an international organisation where committed with the aim of seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation, are acts of terrorism”.<sup>3</sup> Similarly, the Council of Europe Convention on the Prevention of Terrorism (2005) defines acts of terrorism as “acts [that] have the purpose by their nature or context to seriously intimidate a population or unduly compel a government or an international organisation to perform or abstain from performing any act or seriously destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation”.<sup>4</sup>

The Arab Convention for the Suppression of Terrorism, adopted in 1998 by the Council of Arab Ministers of the Interior and the Council of Arab Ministers of Justice in Cairo, defines “any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them or placing their lives, liberty or security in danger, or seeking to cause

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<sup>1</sup> International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197, art. 2 (1)(b) (adopted Dec. 9, 1999, entered into force Apr. 10, 20027)

<sup>2</sup> UN Security Council, SC Res 1566, SCOR, UN Doc S/RES/1566 (Oct. 8, 2004)

<sup>3</sup> Council of the European Union, Council Framework Decision of 13 June 2002 on Combating Terrorism [2002] OJ L 164/3, art. 1.

<sup>4</sup> Council of Europe, Convention on the Prevention of Terrorism (opened for signature 16 May 2005, entered into force June 1, 2007) CETS No. 196.

damage to the environment or public or private installations or property or occupying or seizing them, or seeking to jeopardise national resources”<sup>5</sup> as an act of terrorism.

Concerning the state-level jurisdictions, the United Kingdom and the United States, being among the countries with a reputation for their strict policies and solid legal framework on anti-terrorism, have laid down comprehensive definitions that distinguishes acts of terrorism from general offences. In the United Kingdom, according to Terrorism Act, 2000 – which is one of the many Acts to prevent national and international terrorism – an act of terrorism “involves serious violence against a person...property...health or safety of the public...or an electronic system, where the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and the use or threat is made for the purpose of advancing a political, religious racial or ideological cause... and involves the use of firearms or explosives”.<sup>6</sup> Similarly, in the United States, 18 U.S. Code § 2331 defines “international terrorism” as activities that include “violent acts, dangerous to human life...that appear to be intended to intimidate or coerce a civilian population, influence the policy of a government by intimidation or coercion or affect the conduct of a government by mass destruction, assassination, or kidnapping; and occur primarily in or outside the territorial jurisdiction of the United States”.<sup>7</sup> In Germany “acts of terrorism are “all acts by persons or groups of persons committed for political, religious, ethnic or ideological purposes suitable to create fear in the population and thus to influence a government or public body.”.<sup>8</sup>

All the definitions mentioned above, regardless of being different from one another, lay down certain common characteristics that distinguish an act of terrorism from an offence in the general sense. In this endeavour, in addition to discussing offensive acts that can be linked with terrorism – such as killing, kidnapping or damaging property –, all these definitions focus mainly on the intended purpose or the ultimate purpose of the particular action for it to be defined as an act of terrorism; whether the impact of the wrongful action and/or its consequences are intended to last long after the completion of the wrongful act or whether the action and/or consequences make a significant impact on a population larger than the actual population of victims is specifically considered. The intentioned or the ultimate purpose of

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<sup>5</sup> Arab Convention for the Suppression of Terrorism (adopted April 1998), art. 1(2).

<sup>6</sup> Terrorism Act 2000 (UK), s. 1.

<sup>7</sup> 18 USC § 2331, s. 1(A) & (B).

<sup>8</sup> Dirk Harbrücker, 'EXTREMUS – The German Solution for Act of Terrorism non-nuclear Risks Coverage', 5th International Conference on Nuclear Option in Countries with Small and Medium Electricity Grids (2022)

these acts, as the definitions suggest, can be, but are not limited to, establishing, advancing, promoting, condemning a political, religious, racial, ethnic or ideological cause, intimidating a population or compelling a government or an international organisation to do or abstain from doing a particular act. Hence, in the case of an act of terrorism, two *mens rea* elements can be observed; *mens rea* to commit the immediate act – which can be bombing, shooting or kidnapping – and, importantly, the *mens rea* relating to the ultimate purpose/ intention of the act – or the ultimate *mens rea* – which can be to intimidate the government or establish a racial ideology. It is this ultimate *mens rea* that enables filtering general offences from an act of terrorism. In case of a general offence, the *mens rea* ends when the action is committed, and any ultimate purpose of such an act, if at least faintly exists, barely impacts the community at large; at least the doer does not intend to do so. For instance, if A kills B to rob his money, although the *mens rea* for killing is fulfilled, an ultimate *mens rea* that is as intense as in the case of an act of terrorism is not present. In contrast, if A kills B to initiate political instability, clearly, in addition to the *mens rea* for killing, the ultimate wrongful purpose – or an ultimate *mens rea* – to make an impact on a large community by creating political turmoil is evident, which brings the act under the definition of terrorism.

The definitions above discuss some of these ultimate wrongful intentions that need to be present – either expressly or inferred by evidence – in construing an action as an act of terrorism. Some of these wrongful intentions include, but are not limited to “intimidating a population;<sup>9</sup> affecting the conduct of a government;<sup>10</sup> sowing panic among people;<sup>11</sup> unduly compelling a government or an international organisation; seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation”.<sup>12</sup> The intentions in the definitions have been linked with the *actus reus* or the wrongful acts, such as kidnapping persons, damaging government or private property, harming public health, and destroying electronic systems, in order to form both the required elements of an act of terrorism; *actus reus* and *mens rea*. Therefore, the presence of a comprehensive definition of an act of terrorism, as discussed above, enables isolating actual incidents and acts of terrorism, distinguishing them from general crimes or offences. As a

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<sup>9</sup> International Convention for the Suppression of the Financing of Terrorism, 1999, art. 2(1)(b).

<sup>10</sup> United States Code, § 2331, s. 1.

<sup>11</sup> Arab Convention for the Suppression of Terrorism, 1998, art. 1(2).

<sup>12</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of March 15, 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, art. 3(2).

result, with a specific definition, the law enforcement agencies can isolate incidents linked with terrorism, address and investigate such incidents separately and proceed within the relevant legal framework to prevent terrorism and punish the offenders without interfering with other citizens' rights and liberties.

### III. Undefined “Terrorism” in PTA and its Consequences

Among the critical incongruities of the PTA, the absence of a specific and comprehensive definition of what constitutes “an act of terrorism” has drawn much public criticism and dismay. Provided that the very term “terrorism” should be used and dealt with extreme caution, deciding whether an act is an act of terrorism or merely an offence requires thorough consideration of facts and circumstances and comprehensive evidence. Scott L.J. in *Dumbell v. Roberts*<sup>13</sup>, and Gratien J. in *Muttusamy v. Kannangara*<sup>14</sup> contended that when making an arrest on a “suspicion”, the suspicion must be reasonable and justifiable. Hence, as Lord Porter stressed in *John Lewis & Co. Ltd v. Tims*,<sup>15</sup> officers bolstering up their evidence and assurance while detaining a man arrested is unacceptable; even in a matter of an act of terrorism, the standpoint does and should not differ.

In the case of a terrorist act, the *mens rea*, as discussed earlier, is twofold; the initial *mens rea*, i.e. the wrongful mind in relation to the immediate action – for instance, bombing or assassinating a person, and the ultimate *mens rea*, i.e., the wrongful mind in relation to the intended purpose or ultimate intention of the action – for instance compelling the government to perform an act. Hence, if A shoots and kills B, and only if there is evidence to support the fact that this assassination was with the intentions of intimidating or causing fear among the public, can it be construed as “an act of terrorism”; otherwise, it is simply murder.

In all international level definitions extracted from UN and EU treaties and state-level definitions from UK and US legislations, in addition to the *actus reus*, the ultimate *mens rea* of an act has been emphasised as a compulsory requirement to identify an act of terrorism. This is to say, the final question as to whether a particular offence is merely a criminal offence or an act of terrorism is to be decided considering both initial and ultimate *mens rea*, for an act of

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<sup>13</sup> (1994) 1 All ER 326.

<sup>14</sup> (1952) 52 NLR 324.

<sup>15</sup> (1952) 52 CA 676,692.

terrorism includes a statement intended to go beyond and last long after its physical actions. For instance, the claymore mine attacks launched by the LTTE, targeting unarmed civilians on a bus in Kebathigollewa, Sri Lanka, on June 15, 2006 was not merely an act of mass murder but also a “statement” of their intentions – which, at that point, was compelling the Sri Lankan government to permit the establishment of their separate Elam state in the northern and eastern parts of the country.

However, although the PTA is the main counter-terrorism legislation imposed “to make temporary provisions for the prevention of acts of terrorism in Sri Lanka”,<sup>16</sup> the term “terrorism” does not appear in any of the provisions in the Act (including the interpretations section) other than in the long title, short title and preamble of the PTA. The lack of a comprehensive definition of “act of terrorism” makes the consideration of the fulfilment of certain elements of the act – such as the element of ultimate *mens rea* discussed above – optional and redundant in deciding whether a particular action is an act of terrorism. As a result, this gap “poses a real risk that the legislation could be used in circumstances very far removed from acts of real terrorism, or against minorities or human rights defenders in a discriminatory and sectarian manner.”<sup>17</sup> The potential for PTA to be used against opposite socio-political opinions is ostensible when reading some of the sub-sections of section 2 (1) of the Act. For instance, sections referring to the offences under the Act, state that “any person who...by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups...shall be guilty of an offence under this Act”.<sup>18</sup> Hence, under the mere whims or misunderstandings – or even premeditated intentions – of the officials who make the arrest, a particular expression can be construed as causing religious or communal disharmony, and the one who makes such expressions can be arrested without a warrant,<sup>19</sup> detained and charged under the provisions of the PTA. The absence of a definition for an act of terrorism in the PTA has made the requirement to evaluate whether the accused actually intended causing an act of terrorism redundant (unlike in the international scale definitions of “terrorism” discussed

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<sup>16</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), Preamble.

<sup>17</sup> United Nations, “Human Rights and Counter-Terrorism: UN Special Rapporteur on The Promotion And Protection of Human Rights and Fundamental Freedoms While Countering Terrorism Concludes Visit to Sri Lanka” (2022), available at: <https://www.ohchr.org/en/statements/2017/07/human-rights-and-counter-terrorism-un-special-rapporteur-promotion-and?LangID=E&NewsID=21883> (last visited on June 21, 2024).

<sup>18</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 2(1)(h).

<sup>19</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 6 (1).

above). As a result, any person in power can abuse the provisions of the PTA for personal and/or political agendas and circumvent the due legal procedures of arrests and detention. This is entirely contrary to the guidelines of many international conventions and treaties<sup>20</sup> against arbitrary interference with personal liberties, as well as the position Sharvananda C.J. held in *Namasivayam v. Gunawardena*<sup>21</sup> that “the liberty of an individual is a matter of great constitutional importance. This liberty should not be interfered with, whatever the status of that individual be, arbitrarily or without legal justification”.

The grave danger of this loophole in the PTA being exploited to suppress opposite political and religious views, support arbitrary arrests, unlawful detentions and numerous violations of many rights has been reported multiple times. Very often, following an actual act or incident of terrorism, multiple occurrences of the PTA being abused to infringe the freedom of religion, expression, assembly and movement are reported. In many cases, minorities, journalists and human rights activists become victims of these incidents. Amnesty International reports the detention of Ahnaf Jazeem, a Sri Lankan Muslim poet, for 19 months claiming his poems and teachings could instigate “communal disharmony”, and the detention of Hejaaz Hizbullah under the accusation of aiding and abetting a terrorist linked with the Easter bombing for almost two years, as the most recent cases where PTA is exploited for suppressing minorities, treading away from its intended purpose, making it a “draconian law”.<sup>22</sup>

In terms of detention, persons arrested under sub-section (1) of section 6 of the PTA may be kept in custody for a period not exceeding seventy-two hours without producing before a competent court. Similarly, under the PTA, the magistrate can, on an application made in writing on that behalf by a police officer not below the rank of Superintendent of Police, make an order that such person be remanded until the conclusion of the trial of such person.<sup>23</sup> A magistrate can release such a person from custody only with the consent of the Attorney

<sup>20</sup> Universal Declaration of Human Rights (adopted Dec. 10, 1948 UNGA Res 217 A(III)) (UDHR), arts. 9, 12; International Covenant on Civil and Political Rights (adopted Dec. 16, 1966, entered into force March 23, 1976) 999 UNTS 171, 178 (ICCPR), arts. 9, 17; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR), art. 5; United Nations Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, Annex (1985), U.N. Doc. E/CN.4/1985/4, art. 16, etc.

<sup>21</sup> (1989) 1 SriLR 401, 402.

<sup>22</sup> Amnesty International, “Sri Lanka: Authorities Must Review All ‘Terrorism’ Cases After Granting Bail To Hejaaz Hizbullah” (2022), available at: <https://www.amnesty.org/en/latest/news/2022/02/sri-lanka-must-review-terrorism-cases-after-hejaaz-hizbullah-granted-bail/> (last visited on Apr. 26, 2024).

<sup>23</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 7 (1).

General.<sup>24</sup> Under the PTA, the Court of Appeal may release a suspect on bail only in exceptional circumstances,<sup>25</sup> which was also emphasised in *Hejaaz Omer Hizbullah v. Attorney General*.<sup>26</sup> In addition, the social and psychological impact of an innocent person being accused of an act of terrorism, particularly in a country like Sri Lanka, in which the civilians have suffered the brutality and inhumanity of terrorism for almost four decades, is unthinkable. In addition to the physical burden of being deprived of fundamental rights such as movement, expression and religious and cultural freedom, and the freedom from cruel, inhuman and degrading treatment, a person, if falsely accused under the PTA, even if bail is granted, has to go through intense psychological and social suffering as well. As a result, the victim's education, professional life, family life, social life and future would be jeopardised. Moreover, family members, close relatives, and loved ones of such a victim have to survive through a similar psychological burden and pressure multiplied by social disgrace, humiliation, and disrepute. In addition, even though not victimised, with an unjust law in operation, no citizen will be confident to seek the protection of the law, marking the collapse of the concepts of the rule of law and equality before the law.

#### **IV. A Workable Definition for “Act of Terrorism” – What Should be Considered**

In the matter of setting a workable definition to identify an act of terrorism, the ultimate wrongful intention of the particular act, or the ultimate *mens rea* must be considered as a yardstick. The definitions should necessarily contain a broader, comprehensive and clear account of what wrongful purposes/intentions are construed as terrorism, with a special focus on the ultimate *mens rea*, enabling a clear demarcation between an act of terrorism and other criminal offences.

The purpose of the PTA being preventing and reprimanding a specific set of acts that fall within a specific category, i.e., “terrorism”, one must consider the “intentions of terrorism” in a broader sense, with a special focus on matters specific to the country in defining terrorism. For instance, the separatist agenda of the LTTE to form an Elam state within Sri Lanka is clearly a

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<sup>24</sup> *Ibid.*

<sup>25</sup> Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (Sri Lanka), s. 19(b).

<sup>26</sup> (2022) CA PHC APN 10/22.

matter Sri Lanka should pay special attention to. Such a motive is inconsistent with the Constitution, and therefore, if any campaign is launched or action is committed to support such an intention, it can very well be construed as an act of terrorism, as the ultimate *mens rea* is linked with an act that adversely affects the territorial, social, economic and cultural integrity of the entire state, not just of one or a small group of persons.

Moreover, the international standards and requirements laid down by the United Nations, European Union and treaties that Sri Lanka has signed with regard to prevention of terrorism must be adhered to and adopted in making amendments to the existing laws for preventing terrorism, including the PTA. The international standards laid down by the treaties and international organisations necessitate the protection of citizens' human rights and individual liberties in the journey of preventing terrorism. As a result, adopting such internationally recognised standards and rules into the Sri Lankan legal system and setting definitions for act of terrorism would become not only a vital safeguard against the rights of the citizens but also rekindle the confidence of the national and international communities in Sri Lanka's true intention to promote human rights and individual liberties in the journey to prevent terrorism.

The threat to fundamental rights and individual liberties of the citizens in Sri Lanka due to the absence of a comprehensive and clear definition for an "act of terrorism" is beyond question. A definition-less "act of terrorism" is not only fundamentally incompatible with modern standards and norms of human rights but also a tacit endorsement of violations of fundamental rights recognised by the Constitution of Sri Lanka.

## **V. Judicial Oversight and Procedural Safeguards: Reforms Without Substance**

The Sri Lankan government's publication of revisions to the PTA on January 27, 2022, culminating in the enactment of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act, No. 12 of 2022 on March 2, 2022, presents a complex interplay of superficial progress and persistent structural deficiencies. While the Amendment Act introduced certain incremental improvements—particularly in judicial oversight and detainee rights—it left unaddressed the fundamental flaw that permits prolonged detention without trial. On the surface, the reduction of the maximum permissible detention period under section 9—

from eighteen months to twelve months—represented a symbolic concession towards aligning with principles of due process. Nevertheless, even this curtailed term of incarceration without a fair hearing or meaningful judicial review constituted a serious breach of internationally recognized human rights standards. It perpetuated a regime wherein the executive branch wields disproportionate power to deprive individuals of liberty, absent effective safeguards.

The 2022 Amendment failed to address another foundational defect—the absence of a precise and narrowly tailored definition of “act of terrorism”. This definitional vagueness enabled broad and discretionary enforcement, allowing the state to conflate dissent, civil disobedience, and minority activism with terrorism-related conduct. Within this structurally flawed framework, the introduction of judicial oversight mechanisms, encapsulated in sections 9A and 9B, signal a tentative step toward enhancing accountability. The imposition of mandatory monthly magistrate visits, the authority to order medical examinations, and the duty to report and investigate allegations of torture were welcome procedural protections. The statutory requirement to notify the Human Rights Commission of Sri Lanka (HRCSL) further introduced an external layer of scrutiny. Similarly, the provision in section 10A for detainees’ access to legal counsel and communication with family addressed long-standing critiques of the PTA’s incommunicado detentions. Equally notable was the mandate that a Judicial Medical Officer (JMO) must conduct a medical examination prior to the issuance of a detention order and submit findings to the Magistrate. This safeguard offered a preliminary check against physical abuse, enabling early intervention. The Magistrate’s power to order medical treatment and transfer detainees upon confirmation of torture constituted a significant, if limited, protective measure providing immediate relief rather than retrospective remedies.

However, these procedural reforms did not remedy the overarching deficiency—the continued legality of detaining individuals for up to twelve months without presentation before a court for trial remained unconscionable. The requirement under section 15 for day-to-day trials ostensibly aimed to expedite the judicial process, yet the system remained structurally skewed to delay the accused’s access to justice, reinforcing state dominance. Section 15B, allowing the Court of Appeal or High Court to grant bail if the trial did not commence within twelve months, offered only a partial safeguard. This measure depended on judicial discretion rather than a guaranteed right, allowing prolonged pre-trial detention to persist and undermining the foundational principle of the presumption of innocence. Moreover, the finality of detention orders—subject only to fundamental rights applications under Article 126 or writ petitions

under articles 140 and 141—effectively insulated executive decisions from routine judicial scrutiny. This placed an undue burden on detainees, particularly those from marginalized or vulnerable communities, compelling them to engage in complex constitutional litigation merely to challenge the legality of their detention.

Despite these inadequacies, the government appeared intent on maintaining the PTA’s legal infrastructure. Yet mounting pressure from domestic civil society and international stakeholders began to intensify. In April 2025, the Ministry of Justice appointed a Special Committee, chaired by President’s Counsel Rienzie Arsekularatne, to prepare proposals for repealing the PTA and replacing it with a new counter-terrorism law that would purportedly conform to both constitutional guarantees and international legal standards.<sup>27</sup> By May, the government had conveyed to the EU–Sri Lanka Joint Commission that it would move toward full repeal, explicitly linking this commitment to the retention of GSP+ trade preferences—thus revealing the instrumental role of international economic leverage in catalysing human rights discourse.<sup>28</sup>

However, these state-led initiatives were met with deep skepticism by civil society actors. Over 240 organisations, comprising lawyers, activists, academics, trade unions, and former detainees, issued a unified demand for the immediate and unconditional repeal of the PTA, without replacement. These groups dismissed the newly initiated public consultations as rushed and superficial, arguing that Sri Lanka's existing criminal laws are more than adequate to address acts of terrorism within a rule-of-law framework.<sup>29</sup> The Jaffna Bar Association unequivocally rejected any proposed substitute legislation, characterising it as a veiled continuation of the state’s apparatus for suppressing dissent and minority communities.<sup>30</sup> On

<sup>27</sup> “Committee Appointed to Repeal Prevention of Terrorism Act,” *Newswire*, Apr. 13, 2025, <https://www.newswire.lk/2025/04/13/committee-appointed-to-repeal-prevention-of-terrorism-act/> (last visited on July 10, 2025).

<sup>28</sup> “Sri Lanka Sets Timeline to Repeal and Replace PTA” *Colombo Gazette*, May 7, 2025, available at: <https://colombogazette.com/2025/05/07/sri-lanka-sets-timeline-to-repeal-and-replace-pta/> (last visited on May 7, 2025); “Sri Lanka Claims Commitment to Repeal PTA in Talks with EU” *Tamil Guardian*, May 7, 2025, available at: <https://www.tamilguardian.com/content/sri-lanka-claims-commitment-repeal-pta-talks-eu> (last visited on July 10, 2025).

<sup>29</sup> “Over 240 Civil Society Groups Call for Immediate Repeal of Sri Lanka’s PTA” *Tamil Guardian*, May 29, 2025, available at: <https://www.tamilguardian.com/content/over-240-civil-society-groups-call-immediate-repeal-sri-lankas-pta> (last visited on Aug. 3, 2025); “NPP Government Pressured by Civil Society to Scrap Terror Legislation” *Mawrata News*, May 31, 2025, available at: <https://mawratanews.lk/news/npp-government-pressured-by-civil-society-to-scrap-terror-legislation/> (last visited on Aug. 10, 2025).

<sup>30</sup> “Jaffna Bar Association Calls for Unconditional Repeal of PTA with No Replacement” *Tamil Guardian*, June 12, 2025, available at: <https://www.tamilguardian.com/content/jaffna-bar-association-calls-unconditional-repeal-pta-no-replacement> (last visited on July 10, 2025)

June 24, 2025, the Human Rights Commission of Sri Lanka (HRCSL) formally called for the PTA's repeal, citing routine violations of fundamental rights including arbitrary detention, custodial torture, and disproportionate executive discretion.<sup>31</sup>

International scrutiny likewise intensified. On June 23, 2025, the UN High Commissioner for Human Rights, Volker Türk, visited Colombo and urged the government to declare a moratorium on the enforcement of the PTA, initiate swift releases of detainees, and conduct inclusive and transparent law-making processes. He further called for the repeal of the Online Safety Act (OSA), framing both the PTA and OSA as emblematic of an entrenched pattern of state repression of civic space and dissent.<sup>32</sup> These interventions underscored the broader normative failure of Sri Lanka's counter-terrorism apparatus to conform with international legal standards and democratic legitimacy.

In summation, while the 2022 Amendment Act introduced procedural reforms that nominally curtailed the most egregious abuses permitted under the original PTA, it failed to rectify the core structural defect: the indefinite suspension of ordinary legal safeguards under the pretext of national security. The developments in 2025 mark an inflection point in the struggle to dismantle this regime. Yet the government's insistence on formulating replacement legislation, despite overwhelming domestic and international calls for outright repeal, suggests a continued attachment to a framework of counter-terrorism rooted in executive dominance and legal exceptionalism. Until this paradigm is dismantled and substituted with rights-compatible mechanisms grounded in due process, the PTA—whether in its current form or under a new name—will remain an instrument of profound legal compromise and systemic injustice.

## VI. Conclusion

Among the many flaws within the PTA of Sri Lanka, the absence of a clear and comprehensive definition of an “act of terrorism” stands out as a fundamental defect that undermines both the

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<sup>31</sup> “Sri Lanka Human Rights Commission Calls for Urgent Repeal of PTA” *Tamil Guardian*, June 24, 2025, available at: <https://www.tamilguardian.com/content/sri-lanka-human-rights-commission-calls-urgent-repeal-pta> (last visited on Aug. 3, 2025); “Sri Lanka: Government Must Repeal Prevention of Terrorism Act,” *FORUM-ASIA*, June 24, 2025, available at: <https://forum-asia.org/statement-sri-lanka-government-must-repeal-prevention-of-terrorism-act-cease-attempts-to-create-repressive-laws/> (last visited on July 9, 2025).

<sup>32</sup> EU SEE – Hivos, “UN High Commissioner for Human Rights Calls for the Repeal of the Online Safety Act and Moratorium on Enforcement of the Prevention of Terrorism Act in Sri Lanka” (June 25, 2025), available at: <https://eusec.hivos.org/alert/un-high-commissioner-for-human-rights-call-for-the-repeal-of-the-online-safety-act-and-moratorium-on-enforcement-of-the-prevention-of-terrorism-act-in-sri-lanka/> (last visited on July 10, 2025).

rule of law and the protection of individual rights and liberties. Without such a definition, the PTA enables the conflation of ordinary criminal offences with terrorism, removing the crucial element of ultimate *mens rea* that distinguishes acts motivated by political, ideological, or sectarian objectives from general crimes. This legislative gap not only facilitates arbitrary arrests, unlawful detentions, and violations of constitutional rights but also opens the door for discriminatory and politically motivated misuse of the law, disproportionately targeting minorities, dissenting voices, and human rights defenders. The social and psychological consequences for those falsely accused under the PTA are severe, extending far beyond the individual to families and communities, thus amplifying the urgent need for legal reform.

In light of international legal standards and Sri Lanka's unique socio-political context, it is imperative that the PTA be amended to include a precise and comprehensive definition of terrorism that incorporates both the *actus reus* and the ultimate *mens rea*, with particular attention to the wrongful intentions that threaten the nation's constitutional integrity and social cohesion. Such reform would not only align Sri Lanka's counter-terrorism framework with global norms but also restore public confidence in the legal system's commitment to uphold human rights. Without these critical amendments, the PTA risks remaining a draconian tool of repression rather than a legitimate instrument to prevent genuine acts of terrorism, ultimately weakening the very security and unity it seeks to protect.