

REPEAL OR REFORM OF SRI LANKA'S REPRESSIVE NATIONAL SECURITY LAW

- A Comparative Legal Analysis -

A Speech at the Discussion on
"National Security Law (PTA) in Sri Lanka: Impunity and Accountability"
Grand Committee Room, Houses of Parliament, London
Tuesday, 24 June 2014.

Introduction:

This presentation will be based on 30 case studies who were prosecuted under the PTA in Sri Lanka, fled the Country and sought refugee in the UK.

Background to the Legislation:

Most of the criticism of the Prevention of Terrorism Act (PTA) in Sri Lanka is focused on the contents of the legislation, its inconsistency with international human rights norms and its abuse in implementation. However it is important to examine how such draconian piece of legislation became the supreme law in Sri Lanka.

The PTA was presented to the Parliament, debated and enacted in one day, on 19th July 1979. The intentions behind the Act are two pronged. Firstly, as a part of the Sinhala government's military strategy to oppress the Tamil uprising in its early stages. Secondly, as a political strategy to contain and narrow down the political space for the Tamil self-determination ideology.

The PTA is subject to universal condemnation ever since it was enacted (as the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, as amended by Act Nos. 10 of 1982 and 22 of 1988), as a measure that encourages the state-sponsored terrorism in Sri Lanka. Together with the Sri Lanka's ineffective legal system, the PTA had been deployed to deprive the basic civil liberties and inflict physical harm and mental distress on thousands of Sri Lankan citizens.

Inconsistency with the own Sri Lankan Constitution;

The manner in which the PTA is enacted is an excellent example to highlight the serious deficiencies in law and Policy making in Sri Lanka. The PTA was enacted under Article 84 of the Sri Lankan Constitution. Article 84 is a bizarre provision, which permits bills that are inconsistent with the Constitution of Sri Lanka to be passed by a two-thirds majority in Parliament.

As Justice Mark Fernando observed in *Weerawansa v Attorney General (2000)*: "The PTA was enacted with two-thirds majority, and accordingly, in terms of Article 84, PTA became law despite many inconsistencies with the constitutional provisions".

The PTA could not be challenged either when it was in a bill form or after it became

law due to the limitations imposed by the constitution.

The PTA has a direct impact on the fundamental rights said to be guaranteed by the Sri Lankan constitution. The Act as a whole has many problematic features.

Arbitrary Stop & Search, Arrest and Seizure without Warrant

Article 13 (1) of the Sri Lankan constitution supposed to guarantee the freedom from arbitrary arrest and unlawful detention.

However, Section 6 (1) of the PTA clearly takes away this protection by providing excessive powers to the police to do the following even without warrant:

(a) Arrest any person; (b) enter and search any premises; (c) stop and search any individual or any vehicle, vessel, train or aircraft; and (d) seize any document or thing... There is no requirement to give reasons for the arrest.

Unlawful Detention

Article 13 (2) of the Sri Lankan constitution says *“Every person held in detention shall be brought before the Judge...”*. In contrary, Section 7(1) and Section 9(1) of the PTA provides powers to the police to detain anyone, from 72 hours and eighteen months. In essence, The Emergency Provisions gives power to a Minister to determine the period and place of detention rather than a Judge.

The most concerning aspect of this Section is the power given to A police officer to *“access a person in custody”* and take *“such person... from place to place...”* This encourages the Police officers to take the suspects in white vans and detain them in unknown secret detention facilities.

No Legal Challenge to Detention

Article 13 (3) of the Sri Lankan Constitution is meant to guarantee a fair trial. In contrast, Section 10 of the PTA declares that an order made under Section 9 of the PTA shall be final and shall not be called in question in any court or tribunal...

In reality, we have seen Tamil Political Prisoners being detained for more than 15 years without charge or trial.

Confession Obtained by Torture

While Article 10 (5) of the Constitution says *“Every person shall be deemed innocent until proven guilty”*, most of the accused are often indicted purely based on the confessions obtained under Torture in Police Custody.

Section 16 (1) of the PTA declares that *“any person is charged with any offence under*

this Act, any statement made by such person at any time,can be used as confession and admissible in Court.

Admissibility of confession made to police while in custody has encouraged torture and sexual violence in detention. Almost 90% of the cases filed under PTA are without corroborative evidence.

Another serious denial of fair trial can be seen under Section 16 (2) of the PTA, which violates Article 13 (5) of the constitution by shifting the burden of proof to the accused. This amounts to “presumption of guilt,” rather than “presumption of innocent until proven guilty”.

No Right to Bail

Section 19 (a) of the PTA: every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal...

Blanket Immunity for Security Personnel

Section 26 of the PTA: No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act ... in pursuance or supposed pursuance of any order made or direction given under this Act.

Supreme Law of the Country

Section 28 of the PTA: The provisions of this Act shall have effect notwithstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between the provisions of this Act and such other written law, the provisions of this Act shall prevail...

Draconian in Nature & Excessive powers to the Security Personal;

The sweeping powers given to the executive by the PTA are in the nature of emergency powers. Although the State of Emergency had been terminated, the Emergency Regulation continued to be in force under the PTA. The exercise of those powers are independent of and not subject to even the requirements of the emergency powers, such as proclamation and periodic parliamentary approval.

Inconsistent with International Legal Framework;

The UN Working Group in 1991, recommended that PTA in Sri Lanka should be abolished or brought in line with the international standards as it constitute serious infringements to the Articles of the International Convention on Civil and Political Rights (ICCPR) to which Sri Lanka is a signatory.

In *Nallaratnam Singarasa v Sri Lanka* the Human Rights Committee noted that Section 16 of the PTA was in violation of Articles 14, Paragraphs 1, 2, 3, (c), and 14, paragraph (g) of the ICCPR.

The European Court of Human Rights in ***Sunday Times v UK*** on the need for law to be sufficiently precise, “[...] *the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case.* The Provisions of PTA are neither precise nor adequately accessible.

Section 2 (1) (h) of the PTA is almost a blanket ban on the freedom of expression.

In ***Seren v Turkey*** the Europe Court of Human Rights held that Turkey’s criminal prosecution of a Kurdist activist for disseminating material that referred to a part of Turkey as "Kurdistan" in his material violated the freedom of expression guaranteed by Article 10(2) of the European Convention on Human Rights.

In the same manner, the Provisions of the PTA and to Article 157A of the Sri Lankan Constitution are used to curtail and criminalize Tamil politics.

I provide few examples within my 30 case studies, which I personally represent;

- Mr BASKARAN PIRATHEEPAN is a reporter and a freelance journalist who had his own website and Cable TV network. He won medals for his short films revealing the plight of the Tamils in Sri Lanka. As a result of criticizing the government, his office was raided and all his technical equipment’s were seized under the PTA in December 2012. Despite the warnings, he continued to run his website and was arrested in April 2014. He was detained in an undisclosed detention Center where he was subjected to various tortures and forced to sign confessions. He was neither charged nor produced in Court. Luckily he managed to escape by brining and fled the Country.
- Mr ANUSEELAN SELLATHURAI was a student of Jaffna University, who later worked for the Tamil National Alliance. He stood as a candidate in the Jaffna Provincial Counsel elections despite the warnings of the EPDP. The Provisions of PTA was used to arrest him in order to take him out of the scene. The only legal document issued to him was just a “Receipt on Arrest”, but he was not taken before a Court. Instead, he was kept in a secret detention facility where he was burned and beaten so badly that he would never return to politics again.
- Mr THAVACHCHELVAN SITHAMPARAPPILLAI was a former member of the LTTE who surrendered to the Sri Lankan army during the final war in 2009. In the name of Rehabilitation, he was not only tortured but also forced to learn Sinhala language, encouraged to consume alcohol and drugs. The ICRC visited him in the detention, however he was strictly told not to disclose the ill treatment. Although he was released in January 2010, he was re-arrested again in February 2010 and send to an unknown detente Centre. After rehabilitation, he was re-arrested under PTA and kept in custody where he was tortured in the

most brutal manner including inserting barbed wire into his anus.

- Mrs Lourdes Anthony, a civil servant and her 13-year-old daughter were arrested in Colombo in January 2009, in a round-up operation, following the bomb blast at the Air Force Building. The only reason for the suspicion was that they hold IDs issued in Jaffna. With the intervention of a reverent father, they were released on reporting conditions. However Mrs Anthony was abducted again in March 2009. As a result of severe torture and sexual abuse, she fainted and taken to the Hospital from where she managed to escape.

The above instances are just tip of the iceberg. Arrest and re-arrest of 'rehabilitated' ex-combatants, Prohibition on psychological counseling services, restriction to hold conferences and seminars, direct threats by senior Military officials not to organize cultural, drama or educational programmes in Tamil areas, summoning civil leaders for inquiries by Terrorism Investigation Department (for example the Catholic Bishop of Mannar, the President of the Jaffna University Teachers Union and the former MP Kajendren), warning activists not to engage in political work are examples of the other forms in which the PTA is directly and indirectly used in preventing the normalizing of the North and East of Sri Lanka.

Article 157A of the Constitution of Sri Lanka (the Sixth Amendment to the constitution) and the Prevention of Terrorism Act have a direct and indirect impact on Article 1, 9, 10, 12, 14 and 19 of the ICCPR for both individuals and the peoples /nations in the island of Sri Lanka.

Conclusion and Recommendations:

Both the PTA and Article 157A of the Constitution jointly are preventing the emergence of democratic space in the North and East in the post-war context. The repeal of these legal instruments is required for the Tamil people to be able to self-address most of the post-war issues that have been identified. The PTA represents an aberration of the rule of law and opens the gateway to systematic abuse of human rights, giving rise especially to gross ethnic discrimination in its implementation.

Therefore, the Prevention of Terrorism Act, which is the Supreme National Security Law of Sri Lanka, must be repealed or replaced in consistent with international standards.

"No legislation conferring even remotely comparable powers is in force in any other free democracy operating under the Rule of Law... such provision is an ugly blot on the statute book of any civilized country"

- International Commission of Jurists (1984) *Sri Lanka: A Mounting Tragedy of Errors*; Paul Sieghart