

**REPORT OF THE SPECIAL  
COMMITTEE  
TO REVIEW THE  
ANTI-TERRORISM BILL**

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## **INTRODUCTION**

The Anti-Terrorism Bill was gazetted on the 22<sup>nd</sup> of March 2023. A Special Committee consisting of senior members of the legal profession were appointed by the Bar Association of Sri Lanka in order to review and identify the implications of the aforementioned Anti-Terrorism Bill.

The said Committee was headed by Mr. Palitha Fernando PC., (President), Mr. Rienzie Arsekularatne PC., Mr. Neville Abeyratne PC., Mr. Shavindra Fernando PC., Mr. Anuja Premaratna PC., Mr. Amila Palliayage (Convener), Ms. Sandeepani Wijesooriya Attorney-at-Law, Ms. Harithriya Kumarage Attorney-at-Law, and Mr. Imaz Imtiyaz Attorney-at-Law. The said members of the Committee will be hereinafter collectively referred to as “the Committee”.

The Committee conducted extensive deliberations in order to review the provision of the aforementioned Bill (hereinafter referred to as the “Bill”). The Committee referred to many legislations and documents during the said deliberations. The said referred material is as follows,

- The Prevention of Terrorism Act No. 48 of 1979 (as amended) of Sri Lanka.
- The Penal Code of Sri Lanka.
- The Code of Criminal Procedure Act No. 15 of 1979 (as amended) of Sri Lanka.
- The Assistance to and Protection of Victims of Crime and Witnesses Act No. 4 of 2015.
- The Constitution of Sri Lanka.

The Committee reviewed the English translation of the Bill and presumes the consistency between the Sinhala, Tamil, and English. Any reference to the provision of the English translation of the Bill shall mean and include the same provisions of the Sinhala and Tamil translations of the Bill unless otherwise provided.

## **OBSERVATIONS AND PROPOSALS**

The said Committee was appointed and was requested to review the said Bill and to present a Report within a short period of time. The present Report is formulated based on the deliberations and views put forward by the members of the Committee. The proposals and recommendations submitted by this Report are collectively agreed upon by the members of the Committee and are submitted for further consideration of the Legislation and the Legal Draftsman. The Committee is of the view that the said Bill, with special reference to the stipulated provisions of the said Bill should be revisited by the legislation in view of protecting the fundamental and constitutional guarantees and rights granted to the citizens of Sri Lanka.

The observations and recommendations of the Committee are submitted below in reference to the pertinent provisions of the Bill.

### **Clause 3**

The Committee notes that clause 3 does not encapsulates a clear definition of what acts amounts to offences of terrorism. While the Committee concedes that certain guidelines are presented under clause 3 (1) of the said Bill, it is the view that the stipulated guidelines are formulated in vague manner. Thereby the said clause leaves room to be haphazardly and broadly interpreted in a manner that could infringe upon the rights of the citizens.

The Committee submits the above in reference to the fact that where an act is broadly construed to be an act of terrorism, the public officer apprehending alleged offenders under this section would be provided an unreasonable broad scope of power. This is in light of the rights of the public to conduct legitimate strikes and protests.

Thereby it is the recommendation of this Committee that the legislators should ensure that the said provision laying down the criteria of acts of terror be stringently defined and drafted which does not allow for the misuse and the unfair prosecution of persons who do not act within the spirit of this Bill. The Committee further submits that judicial supervision should be present at all stages from the moment a suspect is apprehended especially in relation to matters relating to detention orders and the curtailment of the freedom of movement.

#### **Clause 4**

The Committee notes the penalty stated for the offence of terrorism upon conviction by the High Court is the death sentence. The Committee further notes that the penalty stipulated under the Prevention of Terrorism Act No. 48 of 1979 upon conviction is life imprisonment.

Furthermore, it is acknowledged that whilst the death penalty is present in Sri Lanka, the enforcement of the said penalty does not exist. Thereby, it is the opinion of this Committee, that the penalty stipulated under clause 4 of the said Bill will have no practical application, nor would the said provision be enforced.

Thereby the Committee submits that the said provision should be revisited by the legislation.

#### **Clause 10**

The Committee submits that clause 10 broadly classifies acts as stated under clause 10 (1) and (2) as acts of encouragement of terrorism. It is the opinion of this Committee that the phrase *"speaks any word or words, or makes signs or visible representations which is likely to be understood..."* could also cover harmless actions of the public such as organising and informing the public of a future protest and/ or a strike which is to be conducted against a respective government, clapping and / or shouting slogans for a passing by possession etc.

Thereby the Committee submits that the degree of involvement of an alleged accused in the acts listed under clause 10 should be revisited to be reformulated in a more stringent manner to prevent a subjective interpretation being adopted in the application of clause 10.

#### **Clause 11**

The Committee observes that the word "terrorist publication" has a narrow interpretation and the law enforcement authorities can misuse the said term to apprehend and take innocent citizen to custody upon instances where they show their

displeasure against the government, or when they share content against the government. Therefore there must be a clear and precise interpretation under clause 105 of the Bill.

Thereby it is the recommendation of this Committee that clause 11 of the said Bill be revisited in order to prevent a subjective interpretation being adopted in the application of clause 11.

### **Clause 13, 14 and 15**

The Committee submits that the penalties stipulated under the aforementioned clauses should not be in line with the provisions of the Penal Code and the Code of Criminal Procedure Act. Thereby the following amendments are proposed to the said provisions by the Committee.

Clause 13(1) – the phrase “.....*rigorous imprisonment for a term not exceeding fifteen years and to a fine not exceeding rupees one million*” to be substituted with “*rigorous imprisonment for a term not exceeding fifteen years **or** to a fine not exceeding rupees one million, **or both***”.

Clause 14 (1) – the phrase “..... *rigorous imprisonment for a term not exceeding ten years and to a fine not exceeding rupees one million*” to be substituted with “..... “*Rigorous imprisonment for a term not exceeding ten years **or** to a fine not exceeding rupees one million **or both***”.

Clause 15(1) – the phrase “.... *imprisonment of either description for a term not exceeding seven years and to a fine not exceeding rupees five hundred thousand*” to be substituted with “.... *imprisonment of either description for a term not exceeding seven years and **or** to a fine not exceeding rupees five hundred thousand, **or both***”.

### **Clause 16**

The Committee submits that the provision of the aforementioned clause appears to impose unnecessary criminal liability in light of the fact that,

- Section 106 of the Code of Criminal Procedure Act provides the Magistrate the power to issue orders in urgent cases upon the discretion of the Magistrate.

- Clause 61 of the said Bill gives a police officer not below the rank of a Senior Superintendent of Police, under the approval of the Magistrate to issue directives to the public upon reasonable apprehension of harm to the public,

Thereby, it is the opinion of this Committee that the said provision should be revisited by the Legislation.

### **Part III**

The Committee notes that Part III of the said Bill consist of provisions from clause 18 to clause 47. The Committee makes a general observation among other things, that the investigation of offences should be under the purview of the judiciary and judicial officer. This is especially in relation to detention order and in respect of the procedure adopted in the investigation of alleged offences.

Thereby the Committee recommends that the said Chapter of the Bill be revisited by the legislation to increase the scope and power afforded for judicial supervision of clauses 18 to 47.

### **Section 28 (2) (a)**

The Committee observes that it is vital to afford the Magistrate to use his or her discretion in the decision of extending a detention order, in light of the circumstances surrounding the alleged offence.

Thereby the Committee recommends that the said provision be revisited by the legislation in order to incorporate the following amendment.

The phrase *“a Detention Order has been issued in terms of section 31, and is placed before the Magistrate for his inspection, the Magistrate shall make an order to give effect to such Detention Order”* be substituted with *“a Detention Order has been issued in terms of section 31, and is placed before the Magistrate for his inspection, the Magistrate **may** make an order to give effect to such Detention Order”*.

### **Section 28 (2) (b) proviso**

This Committee is of the opinion that where there are no reasonable grounds to hold the allegations against the suspect (as stipulated in the proviso) there is no reasonable reason to continue to hold the suspect within the custody of court or to release the suspect on bail in view of the alleged offence and accusations against him or her.

Thereby this Committee recommends that the said proviso be revisited by the legislation and recommends that the suspect be discharged instead of being released on bail.

### **Clause 30 read with Clause 60**

The deliberations of the aforesaid provisions were made in line with clause 60 of the said Bill. The Committee submits that the aforesaid clause does not indicate the time of instituting criminal proceedings. Furthermore, the said clauses do not indicate the type of offences for which the said clauses remain applicable, especially in respect of clause 60.

Thereby it is the recommendation of this Committee that the said two clauses be revisited by the legislation.

### **Clause 31**

It is the opinion of this Committee that the power to authorise a detention order (especially in view of an alleged act of terror) is an instance where a citizen right and freedom of movement, which remain to be a constitutional guarantee afforded by the Constitution of Sri Lanka is curtailed. Thereby, stringent scrutiny and adherence to the legal procedure of Sri Lanka is a mandatory pre-requisite in authorising a detention order.

Thereby it is the opinion of this Committee that clause 31 (1) should be revisited by the legislation to provide the power to authorise a detention order to be afforded to the Minister of Public Security.

Furthermore, in adherence to the principles of the criminal justice system where an alleged suspect's rights are required to be protected until proven guilty, it is the



recommendation of this Committee to revisit clause 31(c) of the said Bill to reduce the time period from three months to one month.

### **Clause 36(5) (c)**

This Committee reiterates the justifications made by the said Committee for Clause **28 (2) (b) proviso**. Thereby it is the recommendation of this Committee that the said provision should be revisited by the legislation and that where there are no reasonable grounds to believe that a suspect has committed an offence under the said Act, the said suspect be discharged of all allegations.

### **Clause 36(6)**

Whilst certain members of the Committee were of the opinion that proceedings being held in-camera is irrelevant in line of the fact that the said proceedings are conducted before a judicial officer in the presence of the Attorneys-at-Law of all relevant parties.

However, the Committee also takes acknowledges the fact that the provisions under the said Bill relate to issues pertaining national security and may, relate to sensitive information. The Committee also takes cognizance of the judgements of **Liversidge v Anderson [1941] AC 206** and **Janak Hidraramani v A. R. Ratnavale 75 NLR 67**.

Thereby, the Committee is of the opinion that whilst matters of national security should be within the purview of the Executive of the country, increased supervision would provide a conducive environment in meting justice and in protecting the separation of powers of the state therein which the rights of the citizens would be protected.

### **Clause 82**

The Committee notes that the President has been afforded unilateral power under clause 82 of this Bill to proscribe an organisation. It is submitted that the President is not under any obligation to obtain recommendations from any party in order to arrive at the said conclusion. This is especially in relation to the broad categories stipulated under clause 82(2) and clause 82(3) which contains the actions under which an organisation is eligible to be proscribed by the President.

Thereby it is the recommendation of this committee that the said provision should be revisited by the legislation.

The Committee further notes that under clause 82(5) the requirement to communicate 'reasons' is necessary in light of the circumstances of proscribing an organisation. Nevertheless, the Committee is mindful of the fact that the said requirement could compromise confidential information and sources which may relate to the infringement of national security.

### **Clause 83, 84, 85 and 86**

The Committee submits that the said clauses, have stipulated an unnecessary expansion of the scope of acts of terrorism. It is submitted that the criteria stipulated under clause 83(2) is detrimental to the rights of the citizens especially in line of the Constitutional guarantees afforded under Chapter III of the Constitution of Sri Lanka.

Thereby it is the opinion of this Committee that the said provisions of the Bill infringe upon the principles of the criminal justice system and act in contravention to the legal rights and entitlements provided for the citizens of the country, whilst obnoxiously violating the fundamental rights of the people.

Thereby, it is the opinion of this committee that the said provisions be revisited by the legislation, especially in view of formulating a system of accountability to the wide discretionary powers afforded to one facet of the state.

### **Conclusion**

It is the view of this Committee that the provisions stipulated in the said Bill violates the fundamental rights enumerated under Chapter III of the Constitution of Sri Lanka, especially in the light of Article 14. Therefore this Committee recommends the Bar Association of Sri Lanka to inform the Ministry of Justice to revisit the said Bill in order to amend the provisions discussed above, and / or to challenge the said Bill in the correct forum.