



THE IMPACTS OF THE ANTI-TERRORISM BILL 2023 ON FUNDAMENTAL RIGHTS: A CRITICAL LEGAL ANALYSIS WITH REFERENCE TO THE CONSTITUTIONAL FRAMEWORK OF SRI LANKA

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Abstract

The Constitution of Sri Lanka recognizes and guarantees fundamental human rights to all individuals within its territory. These rights are entrenched in Chapter III of the Constitution titled as Fundamental Rights. The proposed Anti-Terrorism Bill (ATB) has been a subject of extensive debate and scrutiny due to its potential impact on fundamental human rights. This situation warrants a comprehensive examination of the provisions of ATB, its legislative history, and the objectives it seeks to achieve. In this context, the main objective of this research is to critically analyze the impact of the ATB on fundamental rights within the context of the Sri Lankan Constitution. Accordingly, the study explores the impact of the ATB on specific fundamental rights such as freedom of speech, assembly, privacy, and fair trial. Also, the study focused attention on the practical implications of this legislation on individuals and society as well. This study mainly focuses on the specific research question of whether the proposed ATB violates the prevailing fundamental rights legal regime and whether it infringes the fundamental rights. This research employs a doctrinal legal research methodology based on literature review of primary sources including the 1978 Constitution and legislation, secondary sources and tertiary sources encompassing books and articles to investigate the compatibility of the ATB with the fundamental human rights guaranteed under the Sri Lankan Constitution. Results revealed that the ATB will adversely impact the fundamental human rights with potential for infringement and arbitrary exercise of power. Hence in conclusion, this research recommends the compelling necessity for a critical legal analysis of the provisions of ATB and developing remedial legal provisions to safeguard the fundamental human rights. Furthermore, this research provides significant contribution to counter terrorism by extending a comprehensive evaluation of existing fundamental rights protection and judicial remedies available to mitigate potential abuses arising from the ATB. Moreover, it delves into the complex legal landscape surrounding the ATB and contributes to the ongoing conversation about counterterrorism measures, civil liberties, and the necessity to find a proper equilibrium between security considerations and protection of fundamental rights.

Key Words: Anti-Terrorism Bill, Fundamental Rights, 1978 Constitution, Freedom of Speech, Counterterrorism

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INTRODUCTION

The Sri Lankan Anti-Terrorism Bill (ATB) is a legislative proposal introduced through a Gazette Notification issued on the 22nd of March, 2023 that aims to strengthen the legal framework of the island in addressing the threat of terrorism by attempting to abolish the Prevention of Terrorism Act (PTA) and introduce an Anti-Terrorism Act. The bill is designed to provide authorities with enhanced powers and tools to prevent, investigate, and prosecute acts of terrorism, ensuring the safety and security of Sri Lanka and its citizens. However, such Bills often raise concerns regarding potential infringements on civil liberties and human rights. Critics argue that the broad definitions of terrorism and the extensive powers granted to authorities may be prone to abuse and can lead to violations of fundamental rights including freedom of expression, assembly, and privacy. The Anti-Terrorism legislature serves as a crucial legislative tool deployed by governments worldwide in their fight against terrorism. However, it is imperative to strike a delicate balance between national security pursuits and the safeguarding of fundamental human rights. This research undertakes a critical legal analysis within the constitutional framework of Sri Lanka to examine the impacts of the ATB on fundamental rights, shedding light on the potential tensions arising from counterterrorism measures and individual liberties.

Objectives

The primary aim of this research is to critically analyze the impacts of the proposed ATB on fundamental rights within the context of the Sri Lankan Constitution and to comprehensively analyze the legal provisions of the ATB in Sri Lanka, evaluating its compatibility with fundamental rights as stipulated in the constitutional framework. Through a critical examination of the provisions in ATB and their implementation, this study seeks to explore and analyses the possible impacts on fundamental rights, identify areas of concern, and assess the effectiveness of existing protections.

Hypothesis

It is postulated that the implementation of the ATB in Sri Lanka has resulted in significant repercussions for fundamental rights, potentially leading to violations and abuses by the arbitrary exercise of powers. This hypothesis stems from the notion that unbalanced counterterrorism measures may erode fundamental human rights, impose disproportionate constraints on civil liberties, and weaken the rule of law.

Research Questions

To achieve the aforementioned objectives and test the hypothesis, this research addresses the following key research questions:

What are the specific provisions of the ATB in Sri Lanka that would adversely impact the selected fundamental rights?

Are they compatible with Fundamental Rights legal ideology in terms of theory and practice?

If they are not compatible with the existing constitutional framework of fundamental rights legal regime in Sri Lanka, what are the potential risks of depriving the citizens of their fundamental rights concerning freedom of speech, assembly, privacy, and due process?



METHODOLOGY

In terms of methodology, this paper strictly adopts a doctrinal legal research methodology comprising amalgamation of literature review of primary sources and secondary sources to investigate the compatibility of the ATB with the fundamental rights protected under the Sri Lankan Constitution. Doctrinal research methodology which is a systematic analysis and interpretation of legal principles, statutes, doctrines and jurisprudence relevant to the research topic is employed since this study proceeds to engage in a critical analysis of the legal provisions of ATB and the existing Sri Lankan Constitutional framework. Primary information sources include the Anti-Terrorism Bill, 1978 Constitution and legislation. Besides, secondary information sources encompassing related local and foreign books, newspapers, magazines and internet are utilized to supply additional insight and context. Thus, this research approach involves critical examination and evaluation of prevailing doctrinal sources comprising desk-based research method to understand and analyze the laws related to the current research.

RESULTS AND DISCUSSION

The critical legal analysis conducted on the impacts of the proposed ATB in 2023 on fundamental rights within the constitutional framework of Sri Lanka revealed significant implications on individual freedom and fundamental rights protections. The research findings shed light on the potential adverse impacts arising from counterterrorism measures and the need to strike a balance between national security and the preservation of fundamental rights. There is no particular definition for the term “terrorism” as it differs from country to country since the laws imposed to counter are varied. In this context, United Nations 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 organization to do or to abstain from doing any act” (Herschinger, 2013). In light of history, the initial legal provision to prevent terrorist Acts was the Public Security Ordinance No. 25 of 1947 which appeared as a temporary legal framework imposed by the executive and not as an anti-terrorist law. Then, Act No. 16 of 1978 was passed to curb terrorist activities in the Northern Province which can be called as the first anti-terrorist Act passed in the Sri Lankan history. Later, it was repealed in 1979 and the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 was passed and became permanent in 1982 which remains in force until date. Later, a new bill termed “Anti-Terrorism Bill” was published in a gazette on March 22, 2023 to repeal the Prevention of Terrorism Act No. 48 of 1979 and establish a new law for the prevention of terrorism which has multiple strong opinions that it significantly violates the fundamental rights of the citizens of Sri Lanka (Sri Lanka: Reject New Counterterrorism Bill, 2023).

The comprehensive analysis of the specific provisions of the ATB including Section 3(1)(b), Section 3(1)(c), Section 10, section 11(1)(e), section 19(a) and Section 30 indicated that it granted extensive powers to authorities in combating terrorism. While such powers are necessary to address terrorism effectively, there were concerns about the potential for abuse and violations of fundamental human rights. The broad definitions of terrorism and terrorism-related offenses provided room for interpretation, which, if not carefully managed, could lead to overreach and curtailment of civil liberties. The fundamental rights in the Sri Lankan 1978 Constitution are enshrined in Chapter 3, which guarantees various essential rights and freedoms to the citizens of Sri Lanka. Fundamental rights guaranteed by the Sri Lankan 1978 Constitution includes the right to life, liberty, and personal security, the right to equality and protection against discrimination, the right to freedom of thought, conscience, and religion, the right to freedom of expression, assembly, and association, the right to privacy, the right to own property, and the right to a fair trial (Wickramaratne, 2006). They reflect the commitment of the state to protect and uphold the rights and freedoms of its citizens, promoting equality, justice, and dignity for all.



Research findings reveals that the provisions of proposed ATB are significantly not compatible in procedural manner with the articles 10, 11, 12, 13 and 14 of the Sri Lankan Constitution (CPA Statement on the Anti-Terrorism Bill - 2023 - Sri Lanka, 2023). Section 3 of the proposed bill violates the freedom of conscience, which is also established in Article 10 of the Constitution of Sri Lanka by restricting speech of conscience. Article 11 embodies freedom from torture and cruel, inhuman, or degrading treatment which is a right that protects individuals from any form of torture, cruel treatment, or punishment. According to Section 30 of the ATB, a person accused of terrorism shall not be in remand detention for over one year without filing a criminal case against such a person. This prescribed detention period is intense and results in an excessive punishment that violates Article 11 of the Constitution. Article 12 comprises of the right to equality which can be infringed by section 19(a) supplying extended powers to the executives. Article 13 states the right to freedom from arbitrary arrest, detention and punishment and prohibition of retrospective penal legislation is a fundamental right which ensures that every person is entitled to the protection of the law and the right to a fair trial. Section 19(a) of the proposed legislation grants police officers, armed forces personnel, and coastal security officers the authority to apprehend individuals who engage in activities defined as terrorist acts or those whom the officer objectively believes have committed such acts. However, the lack of clarity regarding the criteria for forming such beliefs creates ambiguity within the bill. This shortcoming may enable armed, coastal, and police officers to potentially abuse their powers by falsely accusing individuals of terrorism based on personal vendettas or without proper justification. Thus, such actions would constitute arbitrary arrest and detention, which is expressly prohibited under Article 13 of the Constitution. Article 14(1)(a) consists of Freedom of speech and expression which is the right that ensures the freedom of speech, expression, publication, and assembly. It allows individuals to express their opinions, thoughts, and ideas freely. Article 14(1)(b) consists of the right to peaceful assembly and association, a fundamental right which grants individuals the freedom to assemble peacefully and form associations or trade unions for various lawful purposes. Article 14(1)(c) contains right to freedom of movement which is the right that guarantees the freedom of movement within Sri Lanka and the right to choose the place of residence. However, reasonable restrictions can be imposed in the interest of national security, public order, or public health. Article 14A mentions right to information which is the right ensuring that every citizen has the right to access information held by public authorities, subject to reasonable restrictions in the interest of national security, public order, or protection of privacy. Moreover, the proposed ATB includes provisions that allows the seizure of the property of an individual who has been convicted of terrorism by a court, regardless of the property being involved in a terrorist activity committed by the sanctioned party. These provisions clearly exhibit the adverse impacts of implementing the ATB on fundamental rights. Section 3(1)(b) of the proposed ATB states that compelling a government to do something or abstain from doing something is a terrorist act. Additionally, part (b) of the same section mentions that retraining a government at local or international level from doing something is a terrorist act. This clearly contravenes Article 14 which embodies freedom of speech, assembly, association, occupation and movement. Section 3(1)(c) prohibits both individuals and the general public from protesting against the government or compelling it to refrain from any act. This evidently violates provision of Article 14(b) which grants freedom of peaceful assembly and Article 14(c) which ensures freedom of association. Section 10 of the ATB restricts physical presence along with printing materials, electronic materials, the internet, or any other publication including a protester holding placards or posters prompting terrorist activities which contravenes the fundamental rights encompassed in the Constitution. This clearly violates article 14(1)(a), which states that every citizen is entitled to the freedom of speech and expression including publications. Additionally, section 11(1)(e) of the proposed ATB criminalizes the dissemination of information regarding such protests, even on social media, press media, or electronic media, as these are classified as terrorist activities under the Bill which infringes the Article 14 which includes the right to freedom of speech and expression including publications (Anti-Terrorism Bill, 2023).



CONCLUSION AND RECOMMENDATIONS

The ATB in Sri Lanka has significant implications for fundamental rights as enshrined in the constitutional framework of the country. Through a critical legal analysis, it has become evident that certain provisions of the Bill may infringe upon the rights to freedom and security of the person, privacy, freedom from torture, and freedom of expression. The Bill's broad powers, such as prolonged detention without charge or trial, intrusive surveillance measures, and restrictions on freedom of expression, raise concerns about potential abuses and violations of fundamental rights. The reported instances of human rights abuses in the context of counterterrorism efforts further highlight the need for careful examination and monitoring of the implementation of the Bill. Hence in conclusion, the findings of the current research reveal that the proposed ATB in 2023 violates the numerous provisions of the 1978 constitution of Sri Lanka and has the potential to convict a person as a terrorist in a procedure which does not adhere or include the domestic nor international standards of anti-terrorism precedence to counter terrorism in a democratic approach which demands the necessity for appropriate recommendations and suggestions.

Recommendations

Several recommendations can be suggested based on the critical analysis of the provisions of ATB. In the contemporary context, the human rights violations in the landscape of countering terrorism has gained significant importance. It is crucial to maintain a balance between the public safety and the protection of the human rights. Initially, Fundamental Rights shall be protected and it is essential to ensure that the ATB respects the fundamental rights protected by the Sri Lankan Constitution. Although the ATB aims to ensure public security, it is identified to be incompatible with fundamental rights of constitutional provision. Hence, the bill has to be amended in this regard as it violates the freedom of speech, expression, and publication of the general public. Accordingly, Section 3 of ATB which violated article 10 by restricting speech shall be repealed. Section 30 of the ATB that infringes article 11 can be amended to with short detention period. Section 19(a) shall be amended to prevent abuse of power, arbitrary arrest and detention protected under Article 13. Section 3(1)(b), Section 3(1)(c) and section 11(1)(e) shall be repealed to protect fundamental rights protected in article 14. Thus, adequate safeguards should prevail to prevent the abuse of powers granted under the bill and to protect individuals from arbitrary detention, torture, and other forms of mistreatment. Further, strengthening oversight mechanisms including independent judicial review and robust parliamentary scrutiny to ensure the Bill's implementation remains compatible with constitutional guarantees. Any ambiguities or problematic provisions should be addressed through repeal or amendments to ensure that the Bill strikes an appropriate balance between national security concerns and the protection of fundamental rights. Finally, Sri Lanka should actively engage in international cooperation to develop effective counterterrorism measures that prioritize human rights. Collaborative efforts with international organizations and peer countries can contribute to the development of a comprehensive and rights-respecting legal framework to address terrorism.

In conclusion, protecting fundamental human rights is of paramount importance in the context of counterterrorism legislation. The Anti-Terrorism Bill in Sri Lanka should be carefully reviewed, amended, and implemented to ensure it upholds the constitutional framework. By adopting the recommended measures, Sri Lanka can strike an appropriate balance between national security and the protection of fundamental rights in its battle against terrorism.



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