

## **Chapter VI**

### Prevention of Terrorism Act: An Analysis

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The Constitution of Sri Lanka contains a provision which enables a bill offending the Constitution to be passed into law by a majority of two thirds of the Members of Parliament without having the effect of amending the Constitution.<sup>2</sup> A bill can also be passed into law by Parliament by adopting a legislative short cut by the Cabinet of Ministers declaring the bill to be 'urgent in the public interest'.<sup>3</sup>

Any government, which intends to circumvent the problem of prohibitions of promulgating Emergency Regulations offending the Constitution, can do so by urgently passing an ordinary law under the procedure mentioned above. The Government of Sri Lanka under President J.R. Jayawardane adopted this method of legislation initially to enact, the Proscribing of the Liberation of Tigers of the Tamil Eelam and other similar Organisations Law No.16 of 1978, on May 29 1978.

The proscribing of the LTTE and other Similar Organisation Law No. 16 of 1978 too contained some draconian provisions. The purpose of the Government was to proscribe the LTTE and other 'similar' organisations.

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<sup>1</sup> Prevention of Terrorism (Temporary Provisions) Acts No. 48 of 1979 as amended by Act No. 10 of 1982 and 22 of 1998 .

<sup>2</sup> Article. 84(1)

<sup>3</sup> Article 84(2)

The word 'similar' was not found in the long title but was replaced by 'any other organisation which advocates the use of violence to achieve its end, the existence of which is prejudicial to the state.'

This law also provides that

- a) if the President is of opinion that other organisations advocates the use of violence and is either directly or indirectly concerned in or engaged in any unlawful activity he, may by order published in the gazette, declare that such organisation is proscribed.<sup>4</sup>
- b) Where any organisation has been proscribed by or under this law, the provisions of this law shall apply to every other organisation engaged in activities substantially similar to them carried on or formerly carried on by the proscribed organisation in like manner as though it was also a proscribed organisation.

This law was rushed through Parliament in one day under the provisions of Article 84(2) of the Constitution as being urgent in the public interest.

Prosecuting the Liberation Tigers of Tamil Eelam and other Similar Organisations Law was the forerunner to the PTA. The Government presented in Parliament the

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<sup>4</sup> Section 2(2)

Prevention of Terrorism (Temporary Provisions ) Act (PTA) on May 27 1979. The PTA repealed the Liberation Tigers of Tamil Eelam and other Similar Organisations Law No. 16 of 1978.<sup>5</sup>

Although this bill was referred by the President under Article 122 (1) (b) of the Constitution to the Supreme Court for a determination whether the bill or any provision therein is or are inconsistent with the Constitution. The bill contained a certificate by which the Cabinet of Ministers had certified that the bill is urgent in the national interest and that it is intended to be adopted with a special majority recognised by Article 84(2) of the Constitution.

According to Article 120 (c) which states that ‘if the Cabinet of Ministers certifies that a bill which is not described in its long title as being for the amendment of any provisions of the Constitution, or for the repeal and replacement of the Constitution, intended to be passed with a special majority required by Article 84(2), the only question Court may determine is whether such bill requires approval by the people at a referendum by virtue of the provisions of Article 83 or whether such a bill is required to comply with paragraph (1) and (2) of Article (82).’

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<sup>5</sup>. Section 30

A panel of three judges of the Supreme Court<sup>6</sup> decided and reported to the President that the said bill was not described in its long title as being for the amendment of any provision of the Constitution and because of that the only question that the Court had to decide was whether such bill requires approval by the people at a referendum by virtue of the provisions of Article 83 or whether it must comply with paragraph (1) and (2) of Article 82. The Court was of the opinion that the Bill did not require the approval of the People at a Referendum nor was it one within the contemplation of Article 83 of the Constitution.<sup>7</sup>

As a result of the tactical procedure adopted by the Government no person or organisation could challenge the Bill under Article 120 of the Constitution. Justice Mark Fernando in **Weerawansa v. Attorney-General** stated in a case decided by the Supreme Court after the adoption of the PTA that 'when the PTA bill was referred to the Supreme Court, the Court did not have to decide whether or not any of the provisions constituted reasonable restrictions on Article 12(1), (13(1), and 13(2) permitted by Article 15(7) in the interest of national security, public order and respect for the rights and freedoms of others, or of meeting the just requirements of a democratic society *inter alia* because the Court was informed that it had been decided to pass the bill with a

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<sup>6</sup> Neville Samarakoon, C.J and R. S. Wanasundara, and G.T. Samarawickrama JJ

<sup>7</sup> SC, SD No. 7. 79, AT/Parl/,13.

two thirds majority. The PTA was accordingly enacted with a two thirds majority and became 'good law' 'under Article 84 despite many inconsistencies with the constitutional provisions'<sup>8</sup>

### **The Parliamentary Debate on the PTA Bill**

The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 was presented in Parliament by the Minister of Justice K. W. Devanayagam, a member of the Tamil community representing the Eastern Province on January 19 1979 and was rushed through Parliament the same day.

Maithripala Senanayake an opposition Member of Parliament speaking in the debate said that a copy of the bill was made available to the members only the same morning of the day of the debate.<sup>9</sup> He told Parliament, quoting a speech made by President J. R. Jayawardane in Parliament in 1972, as the Leader of the Opposition that 'if there was a breakdown of law and order that the Public Security Ordinance under which the President had power not only to amend the existing law but also to make new law, is more than adequate to deal with the situation.' 'Moreover whatever action the government may take under the Public Security Ordinance will be subject to effective Parliamentary control in view of the amendment

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<sup>8</sup>. Weerawansa v Attorney General and others, (2000) 1 Sr. L.R 395

<sup>9</sup> Parliamentary Debates, Official Reports, 19 July 1979, Column 1445.

to the Ordinance which was passed recently as February 1978 by the present Government itself.' He questioned as to why the Government was seeking to enact special laws at that juncture when no such law was required to deal with the problem it was faced with.<sup>10</sup>

He said that the bill was a reproduction of Emergency Regulations which were in force during the period of 1970-77 or of the Criminal Justice Commission Act,<sup>11</sup> or the Exchange Control (Amendment) Act of 1972 all of which this Government condemned as being inhuman and barbaric and lost no time in repealing soon after it was elected to office. He stressed further that some clauses indeed were more stringent than anything that this country would have had in the past while others were without precedent. The Bill he said did not seek to deal merely with violence and terrorism in the North but had much wider application and sought to create a permanent state of emergency throughout the country free of parliamentary control.<sup>12</sup>

Continuing his speech he said 'on the pretext of a security problem in Jaffna which the Government can quite adequately tackle with the Public Security Ordinance (PSO) it is seeking to arm itself with powers under the normal law which it can use in any part of the country in the next three years to deal with political agitation which

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<sup>10</sup> Ibid. Column, 1462

<sup>11</sup> Ibid. Column 1462

<sup>12</sup> Ibid. Column 1463