

[ADRN Issue Briefing]

Sri Lanka's Prevention of Terrorism Act: An Anti-Minority Cudgel

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There are many reasons why terrorism takes root in a given society, but often the impulse stems from discrimination and inequality. States seek to maintain a monopoly on the use of force within their territories, and those that fan discrimination and inequality—be it along ethno-religious or regional lines—prod those marginalized to rebel against state-imposed oppression. The details may vary but this dynamic is more or less fundamental to most secessionist violence. This means that more often than not, it is the state that is most responsible for creating the conditions for terrorism it thereafter seeks to terminate. Prevention of terrorism acts have become a convenient tool in this regard, even if such mechanisms aggravate state-sponsored terror.

Tamil Separatism, Neoliberalism, and the Prevention of Terrorism Act

States have used various terminology to create such acts, and in South Asia the draconian policies associated with anti-terrorism legislation were instituted on top of penal codes that date to colonial times. In Sri Lanka's case, the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979¹ was no doubt inspired by India's Armed Forces Special Powers Act (AFSPA), which was designed to pacify so-called "disturbed areas,"² and the various similar acts that were passed in the United Kingdom starting from the 1970s. In the Sri Lankan case, the act was set up to counter the minority Tamils' quest to secure a separate state of *Eelam*. While the Liberation Tigers of Tamil Eelam (LTTE) eventually became its main proponent, at the time the act went into force, numerous youth secessionist groups had formed in reaction to Sri Lanka's racist and ethnocentric anti-Tamil policies.

This burgeoning Tamil rebel movement that legitimized the PTA (Prevention of Terrorism Act), however, coincided with the newly-elected, right-wing United National Party government's attempts to introduce structural adjustment reforms. This reversed the previous socialist government's autarkist policies, and it transformed the island's economy in a rightward direction. Referring to the UK's rightward drift under Margaret Thatcher, Stuart Hall noted that free-market economies mandated strong states.³ President J. R. Jayewardene's quest to restructure the island's

¹ [http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_\(Temp_Provisions\).pdf](http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Prevention_of_Terrorism_(Temp_Provisions).pdf)

² See <https://legislative.gov.in/sites/default/files/A1958-28.pdf>

³ Stuart Hall, *Drifting Into a Law and Order Society* (London: Cobden Trust, 1980).

economy in a free market direction required the taming of leftists and vested interests that thrived under the previous socialist government. Therefore, the economic reforms most likely also influenced Sri Lanka's PTA. The megalomaniac Jayewardene could thus justify the PTA using the separatist threat emanating from the northeast while also weaponizing the act against those opposed to his open market reforms.

The PTA affected individuals from all ethnoreligious communities, but it has especially brutalized Tamils, as many were taken into custody with the flimsiest evidence.⁴ Those tortured and radicalized played no small role in transforming Tamil moderates into hard-core proponents of *Eelam*.⁵ The civil war that lasted nearly three decades ended in 2009 but Tamils continued to be arrested and abused with impunity. Following a visit to Sri Lanka in 2017, the United Nations Special Rapporteur on Human Rights and Counter-Terrorism referred to the "industrial-scale injustice" the PTA perpetrates against Tamils and warned that its abuses will only reignite the conflict.⁶

Sri Lanka's government, however, has disregarded such warnings and the international community's repeated calls to repeal the PTA. Indeed, the present government under President Gotabaya Rajapaksa has now authorized additional regulations under the PTA that seems especially geared to target the island's Muslims. Branded the Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021,⁷ it stands to further destabilize the island's ethnoreligious relations.

The Muslims' Turn

Beginning in the 1950s, successive Sri Lankan governments engaged in well-calibrated anti-Tamils policies that made the island into a Sinhalese Buddhist ethnocracy.⁸ The resultant Tamil rebellion was inevitable, just as its failure to secure *Eelam* predictable.⁹ If, as noted above, the quest for separatism legitimated the PTA, the likes of The Terrorism Investigation Division (TID) continue to use the act to abuse those defending human rights and seeking accountability for war crimes.¹⁰ The new regulations that expand the PTA, however, must be considered in line with the Islamophobia run rampant since the civil war ended in 2009.

Sri Lanka has experienced episodic anti-Muslim violence, but the Islamophobia that was ramped up starting around 2011 ensued with the state's imprimatur. President Mahinda Rajapaksa's

⁴ See Amnesty International, *Sri Lanka: Countering Terrorism at the Expense of Human Rights*, January 2019, at <https://www.amnesty.org/download/Documents/ASA3797702019ENGLISH.PDF>. Also see Human Rights Council, Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism A/HRC/40/XX/Add.3 (23 July 2018), para 1.

⁵ This claim is based on numerous author interviews conducted with Tamils in especially the United Kingdom and Canada who are now part of vocal diaspora communities.

⁶ United Nations (Sri Lanka), "Full Statement by Ben Emmerson, UN Special Rapporteur on Human Rights and Counter-terrorism, at the Conclusion of His Official Visit," July 14, 2017, available at <https://lk.one.un.org/news/full-statement-by-ben-emmerson-un-special-rapporteur-on-human-rights-and-counter-terrorism-at-the-conclusion-of-his-official-visit/>.

⁷ For the relevant government notification (gazette), see http://documents.gov.lk/files/egz/2021/3/2218-68_E.pdf

⁸ Neil DeVotta, "Sri Lanka: The Return to Ethnocracy," *Journal of Democracy* 32, no. 1 (January 2021): 96-110; Neil DeVotta, "The Genesis, Consolidation, and Consequences of Sinhalese Buddhist Nationalism," in *When Politics are Sacralized: Comparative Perspectives on Religious Claims and Nationalism*, eds., Nadim N. Rouhana and Nadera Shalhoub-Kevorkian (Cambridge: Cambridge University Press, 2021): 187-212.

⁹ Neil DeVotta, "Liberation Tigers of Tamil Eelam and the Lost Quest for Separatism in Sri Lanka," *Asian Survey* 49, no. 6 (November/December 2009): 1021-51.

¹⁰ <https://www.crisisgroup.org/asia/south-asia/sri-lanka/sri-lanka-free-prominent-rights-defenders>

landslide reelection victory in 2010 convinced him that he did not hereafter need minority support to stay in power¹¹ and that he could therefore fan anti-minority sentiment—with the Tamils tamed, it was now the Muslims’ turn—to build a political dynasty.¹² This led to various pro-Buddhist groups, many led by monks, attacking mosques and Muslim businesses and homes with the regime’s connivance. The uncompromising and puritanical Wahabi-Salafi strand of Islam that has taken root among many Sri Lankan Muslims may be conducive to armed Islamist movements,¹³ but the 2019 Easter Sunday bombings that killed 269 people is hard to explain without factoring in the anti-Muslim agitation and violence that took place post-civil war. It is now clear that Zahran Hashim, the mastermind of the Easter Sunday attacks, used the anti-Muslim violence the government tolerated to recruit bombers.¹⁴

The Tamil rebels were at the forefront in deploying suicide bombers, but not even they could carry out multiple and coordinated bombings like the Islamists did when attacking Christian churches and upscale tourist hotels. The bombers were inspired by Islamic State (IS) ideology,¹⁵ although there is no evidence that IS planned the attacks (despite claiming to have done so).¹⁶ Following the explosions, nearly 2,000 Muslims with direct or suspected links to the bombers were arrested, and others have since been arrested using the PTA, which allows authorities to detain individuals incommunicado and without charges or access to lawyers for 18 months. While a suspect must be brought before a magistrate within 72 hours of the arrest, the magistrate has no authority to determine if the basis for the arrest is legal. In this light, why would the Sri Lankan state want to further expand the PTA?

Sweeping New PTA Regulations

Sri Lanka’s draconian PTA makes a mockery of the rule of law,¹⁷ partly due to its arbitrary enforcement.¹⁸ In this light, the new regulations expanding the state’s ability to abuse individuals represent a monstrosity ginned up by Sinhalese Buddhist supremacism run amok. The so-called “De-radicalization Regulations” allow the security forces to place an individual in “reintegration centers” if the person “by words either spoken or intended” seeks to commission “acts of violence or religious, racial or communal disharmony or feelings of ill will or hostility between different

¹¹ Jayadeva Uyangoda, “Sri Lanka in 2010: Regime Consolidation in a Post-Civil War Era,” *Asian Survey*, Vol. 51, no. 1, p. 133.

¹² Neil DeVotta, “Sri Lanka: From Turmoil to Dynasty,” *Journal of Democracy* 22, no. 2 (April 2011): 130-44.

¹³ Dennis McGilvray and Mirak Raheem, *Muslim Perspectives on the Sri Lankan Conflict*, Policy Studies 41 (Washington D.C.: East-West Center, 2007).

¹⁴ Meera Srinivasan, “Sri Lanka Easter Blasts: ‘Anti-Muslim Riots a Possible Trigger,’” *The Hindu*, April 27, 2019, at <https://www.thehindu.com/news/international/sri-lanka-easter-blasts-anti-muslim-riots-a-possible-trigger/article26960071.ece>

¹⁵ Neil DeVotta, “Sri Lanka’s Christians and Muslims Weren’t Enemies,” *Foreign Policy*, April 25, 2019, at <https://foreignpolicy.com/2019/04/25/sri-lankas-christians-and-muslims-werent-enemies/>

¹⁶ At the time of writing which is over two years after the bombings, it was found that certain governmental officials and intelligence personnel colluded with certain bombers. See Colombo Telegraph, “Cardinal Blasts Nandasena Regime For Failing To Investigate ‘Sonic-Sonic,’; Says Bad Leadership Has Left Country Cursed,” June 3, 2021, at <https://www.colombotelegraph.com/index.php/cardinal-blasts-nandasena-regime-for-failing-to-investigate-sonic-sonic-says-bad-leadership-has-left-country-cursed/>

¹⁷ For a recent report documenting how the PTA further undermines the rule of law, see Ermiza Tegal, *Understanding Rule of Law, Human Security and Prevention of Terrorism in Sri Lanka* (Colombo: Law & Society Trust, 2021).

¹⁸ For instance, when ten family members conducted a private memorial service in May 2021 for a relative who died during the civil war security forces in their area arrested them as the present government renewed the ban on Tamils commemorating the war dead publicly. Since the arrest was under the PTA, the magistrate they could not grant bail. See Jehan Perera, “Power Of Goodwill Gestures Applies Locally and Internationally,” *The Island*, June 8, 2021, at <https://island.lk/power-of-goodwill-gestures-applies-locally-and-internationally/>

communities.”¹⁹ The suspect can be placed in rehabilitation for a year, with detention extended for another year, without due process. The regulations as written are so vague that “surrendees and detainees” can be arrested without evident proof and merely based on supposed intention. The irony here is that it is Sinhalese Buddhist nationalists and Buddhist monks that are at the forefront when fanning ethno-religious divisions in the country,²⁰ yet no one expects such extremist Buddhist monks and nationalists promoting blatant violence against minorities to be affected by these regulations.

Some have referred to China’s reeducation camps for Uighurs in Xinjiang Province and wondered if the expanded regulations under the PTA are part of a sinister plan to similarly persecute Sri Lanka’s Muslims.²¹ Although this may be a stretch, there is no gainsaying that the present Gotabaya Rajapaksa government is bent on further empowering Sinhalese Buddhists by demonizing minorities. This regime was set on marginalizing minorities before the COVID-19 pandemic. Ongoing militarization and policies that were introduced to colonize Northern Province, where Tamils constitute a majority, and Eastern Province, where Tamils and Muslims constitute a majority, especially made this clear.

Indeed, neither the COVID-19 pandemic nor the pressure put on the government during the United Nations Human Rights Council (UNHRC) meetings in Geneva from February to March curtailed the regime’s anti-Muslim agitprop. Having initially blamed Muslims for spreading the virus, the government kept insisting on cremating those who died from COVID-19, despite Muslims (and some Christians) opposing the policy and the World Health Organization repeatedly saying it was safe to bury COVID-19 victims.²² Even as the UNHRC was debating the sorry state of human rights in Sri Lanka (including the islamophobia trending on the island), a leading hyper-nationalist minister called for banning the burqa and shuttering over 1,000 madrassas on national security grounds.²³

Ultimately, the expanded regulations under the PTA may be designed to further whip up Islamophobia and thereby divert attention from the economic woes COVID-19 has aggravated. In this case, the PTA operates as a tool of the ruling elite who have manipulated their Sinhalese Buddhist nationalist credentials to come to power.²⁴ The continued detention of Hejaaz Hizbullah, a leading human rights lawyer, and the recent arrest of prominent Muslim politician Rishad Bathiyudeen, both under the PTA, fit this mold given that their arrests deal more with optics than credible wrongdoing.²⁵ In the least, the new regulations will allow the regime to put away detractors amidst less controversy since silencing them within “reintegration centers” will be more convenient than prosecuting them via the court system. Whatever the government’s intentions, these additional regulations to the PTA further jeopardize minority rights in Sri Lanka. They also stand to

¹⁹ See http://documents.gov.lk/files/egz/2021/3/2218-68_E.pdf

²⁰ Any number of YouTube videos prove the point. For one despicable example, which shows a monk slapping a Christian pastor while police and a crowd look on, see <https://www.colombotelegraph.com/index.php/ampitiye-sumanes-slap-fell-on-the-civility-of-the-sinhala-buddhists/>

²¹ Shreen Saroor, “Denying Justice While Dehumanizing a Community at Large,” Groundviews, April 21, 2021, at <https://groundviews.org/2021/04/21/denying-justice-while-dehumanizing-a-community-at-large/>

²² When the government did finally allow COVID-19 related burials in March, it was because it wanted Muslim states to vote against the UNHRC resolution demanding accountability for alleged war crimes.

²³ The dissonance in communication may be due to incompetence, or individuals seeking to burnish their anti-Muslim credentials.

²⁴ Farzana Haniffa, “What Is Behind the Anti-Muslim Measures in Sri Lanka?” Aljazeera.com, April 12, 2021, at <https://www.aljazeera.com/opinions/2021/4/12/what-is-behind-the-anti-muslim-measures-in-sri-lanka>

²⁵ Thyagi Ruwanpathirana, *On Hejaaz Hizbullah: The Latest Victim of Sri Lanka’s Draconian Prevention of Terrorism Act*, Amnesty International, July 15, 2020, at <https://www.amnesty.org/en/latest/news/2020/07/sri-lanka-on-hejaaz-hizbullah-and-the-prevention-of-terrorism-act/>; Meera Srinivasan, “MP Held Over Sri Lanka Easter Attacks,” *The Hindu*, April 24, 2021, at <https://www.thehindu.com/news/international/mp-held-over-sri-lanka-easter-attacks/article34402733.ece>

further radicalize a Muslim minority that steadfastly supported the Sri Lankan state against Tamil separatism.

Conclusion

A draft resolution that is currently making its way through U.S. Congressional committees partly points to the “impunity [that] prevails in the country with the outdated and the excessively harsh Prevention of Terrorism Act, which does not comply with international standards and has still not been repealed despite repeated promises by the government.”²⁶ This coincides with a resolution adopted by the European Parliament, which notes how the PTA has “led to consistent and well-founded allegations of torture and sexual abuse, forced confessions and systematic denials of due process” and asks the EU Commission to consider temporarily withdrawing Sri Lanka from the EU Generalised Scheme of Preferences Plus (GSP+) until the country repeals or replaces the PTA with legislation that “adheres to international best practices.”²⁷ The GSP+ program reduces tariffs on Sri Lanka’s exports to the EU and its suspension stands to drastically impact the island’s export sectors.

Sinhalese Buddhists especially take umbrage when foreign governments target Sri Lanka in this manner. No doubt, the big powers resort to hypocrisy when conducting foreign policy; and some justifiably feel that such resolutions are influenced less by a concern for the island’s minorities and more by its increasing tilt toward China. This noted, the fact remains that the PTA helped fan Tamil terrorism even as it further undermined democracy and the rule of law. Deployed indiscriminately against Muslims, it could make the country a hotbed of Islamist terrorism as well. Consequently, it is in Sri Lanka’s interest to finally bury the PTA, because this is legislation that has done much harm and little good. ■

²⁶ The draft is available at <https://www.congress.gov/bill/117th-congress/house-resolution/413/text?r=1>

²⁷ For the draft resolution see https://www.europarl.europa.eu/doceo/document/RC-9-2021-0355_EN.html

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