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IMPORTANCE OF DEFINING THE TERM TERRORISM IN SRI LANKA: Terrorism Studies Perspectives

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The Anti-Terrorism Bill of Sri Lanka was gazetted on September 15th, 2023, and presented to the Parliament by the Minister of Justice, Prison Affairs and Constitutional Reforms on 10th January 2024. The Bill has drawn the attention of the public due to its many pros and cons and has been criticized by different interest groups.

This commentary takes a Terrorism Studies perspective and highlights the importance of defining the term 'terrorism' by the State (Sri Lanka) as a specific offence so that it will be able to avoid any controversies in criminalizing other acts that do not fall within the generally accepted definition of 'terrorism'. The authors' position is that because the term 'terrorism' is not defined by the Bill, there is too much vagueness in the offences listed, and therefore prioritizing 'acts of terrorism' has not been maintained as the focus of the Bill. This vagueness also allows for criticism of the Bill as a possible restriction and/or violation of human rights.

Introduction

With seven major ethnic groups namely Sinhalese, Sri Lankan Tamils, Indian Tamils, Sri Lankan Malays, Burghers, and Indian Moors and with four major religions such as Buddhism, Hinduism, Islam, and Christianity, Sri Lanka is considered a multi-ethnic and multi-religious society. The national fault lines in Sri Lanka were created because the ethnic and religious diversity paved the way for the British to practice a 'Divide and Rule' policy. Post-independence in 1948, the policies implemented by national leaders promoted 'ethnic nationalism' over 'Sri Lankan nationalism' and thirty years of separatist conflict became inevitable.

Not only that, but also Sri Lankans experienced 1971 insurrection and 1987 insurrection led by young radicals from Janatha Vimukthi Peramuna (JVP). Both the insurrections took the form of a class struggle of the rural youth grappling with economic hardships, inequality in distribution of resources and lack of equal opportunities. Given this situation, in 1979 the government implemented a 'temporary' Act to prevent 'terrorism'. The Prevention of Terrorism Act (PTA) was made permanent in 1982 and became one of the primary sources of legislation to deal with the three decades of separatist conflict from 1983 to 2009 and beyond¹.

The PTA was highly criticized by the international community and the public of Sri Lanka. The PTA gives the police the right to hold detainees for up to 18 months without charging them and to make

¹ Amnesty International. (2022). *End The Use of And Repeal the Draconian*. <https://www.amnesty.org/en/wp-content/uploads/2022/02/ASA3752412022ENGLISH.pdf>

warrantless arrests for vague unlawful activities². Human Rights Watch noted that this effectively creates a legal black hole by depriving suspects of their fundamental rights³. The government has often been accused of arbitrary arrests of individuals during the separatist conflict and in the post-war period the call for its repeal was strengthened. The Counter Terrorism Bill (CTB) that was proposed in 2019 to replace the PTA, but it was also criticized for the possibility of its provisions undermining the constitution of Sri Lanka, particularly the fundamental rights chapter.

The Easter Sunday terror attacks on 21st April 2019 postponed any further steps on the repeal and replacement of the PTA, and in the aftermath of the attacks the PTA was once again condemned on both grounds of its effectiveness and its failure to protect human rights of individuals. Based on data from the Human Rights Commission of Sri Lanka, approximately 600 people have been arrested by the government under the PTA from 2019 to 2022⁴. Human Rights watch continuously accused the government stating that, the police have unjustly detained hundreds of Muslims in 2019 after the horrific Easter Sunday bombings.

The current government's proposed revisions to the PTA were released on 27th January 2022. According to the proposed revisions, the period of judicially supervised detention has been reduced to 12 months. However, the PTA still goes against the ban on arbitrary detention. The revisions of the PTA also do not provide a proper definition for the term 'terrorism'

Most recently, the Anti-Terrorism Bill (ATB) of Sri Lanka has been gazetted on September 15th, 2023, and presented by the Minister of Justice. Yet again, the Bill displays room for improvement especially in defining the term 'terrorism' since, a comprehensive classification has not been provided for the term 'terrorism' in ATB.

Decoding the Term Terrorism

In his book 'Inside Terrorism', Professor Bruce Hoffman states that defining the term terrorism has always been a challenge and that a majority of people lack a more accurate, detailed, and fully explicative definition, leaving them with only a dim notion or image of the term⁵. Since there is no universally agreed definition for terrorism, states and organizations have been compelled to define the term according to their own experience of power and authority, making it more complicated. This can lead to 'one man's terrorist becoming another man's freedom fighter'⁶. In order to avoid any conflicts of interests, it is important for a state to define the term 'terrorism', so that it avoids the ambiguity of whether the accused individual/group of individuals have actually committed an act of terrorism or not.

Part II Section 3(1) of the ATB lists the offenses related to terrorism, but it has not described how the State defines the term "terrorism". Thus, how the offences are connected to terrorism becomes vague, since the term 'terrorism' has not been defined by the State. If we take for example the offence of murder, kidnapping or robbery, these are criminal offences already identified in the Penal Code of Sri Lanka. The difference in the ATB is that 3 (1) of the ATB states that "any person who commits any act or illegal omission specified in subsection (2)" - such as murder, kidnapping, offence of robbery etc. - "with the intention of intimidating the public or a section of the public" is considered as an offence of terrorism. Thus, this specific intention appears to be the key element. Is "intimidation of the public or a section of the public" equal to terrorism? However, Section 3(1) also has subsections (b) and (c) which add the following: (b) wrongfully or unlawfully compelling the Government of Sri Lanka, or any other Government, or an international organization, to do or to abstain from doing any act; or (c)

² Human Rights Watch. (2022, February 7). *"In a Legal Black Hole: Sri Lanka's Failure to Reform the Prevention of Terrorism Act"*. <https://www.hrw.org/report/2022/02/07/legal-black-hole/sri-lankas-failure-reform-prevention-terrorism-act>

³ *ibid*

⁴ Human Rights Watch. (2022, February 7). *"Sri Lanka: Grave Abuses Under Discredited Law"*. <https://www.hrw.org/news/2022/02/07/sri-lanka-grave-abuses-under-discredited-law>

⁵ Hoffman, B. (2018). *Inside Terrorism* (3, pp. 1–44). Columbia University Press: New York

⁶ Wikan, V. S. (2018, November 29). Is "One Man's Terrorist Another Man's Freedom Fighter"? E-International Relations. https://www.e-ir.info/2018/11/29/is-one-mans-terrorist-another-mans-freedom-fighter/#google_vignette

propagating war or, violating territorial integrity or infringement of sovereignty of Sri Lanka or any other sovereign country.

Thus, one can ask the question what exactly is terrorism and how does the State explain terrorism? If not, the offences of terrorism can also be described as merely as a criminal act or as an offence of insurgency, due to the lack of defining the term 'terrorism' separately.

In order to understand the importance of defining the term 'terrorism' by the State, the following chart depicts how terrorism differs from insurgency which leads to decoding the ambiguities of why it ought to be defined by the State.

Graph 1: The Difference between Insurgency and Terrorism

Categories	Insurgency	Terrorism
Goals	An insurgency is a long-term political and military conflict between one or more groups and a legally recognized government over control of all or a portion of the latter's territory. Typically, insurgents aim to attain political autonomy or independence, establish their own control, or overthrow the current government.	Terrorism is a technique employed in the larger framework of insurgency or other types of warfare. It entails the purposeful use of violence, frequently directed towards civilians or non-combatants, with the goal of instilling fear, intimidating the populace, or pressuring governments to alter their policies. Typically, the goal of terrorist acts is to sway public opinion or political outcomes.
Targets	Infrastructure, military and administrative facilities, and occasionally adversaries or civilian accomplices are the main targets of insurgents. Frequently, what they do is a part of a bigger plan to subvert government authority and increase their own power.	Terrorist organizations intentionally target public areas, symbolic targets, or humans in order to increase anxiety and psychological damage. While some terrorist attacks may specifically target military people or public figures, their main goal is to sow fear throughout the public or incite a government reaction that may be perceived unfavorably.
Structure	Typically, insurgent organizations are hierarchical, with clear military objectives, leadership, and command structures. They frequently exert control over the areas or towns in which they operate, offering leadership or services to win over the local populace.	Terrorist groups can take many different forms, such as decentralized networks and individuals (lone wolves) influenced by ISIS or hierarchical formations with a central head, such as Al-Qaeda. They might work internationally and employ cutting-edge disinformation to enlist and radicalize people.
Tactics	A range of military strategies are employed by insurgents, such as ambushes, raids, guerilla warfare, and occasionally conventional combat. They seek to gain popular	Terrorism relies on asymmetric tactics, such as bombings, shootings, kidnappings, and suicide attacks, to create fear and uncertainty among civilian populations. The goal is often to

	support by using both military and political measures to erode government control over area.	provoke a disproportionate government response or to undermine public confidence in the government's ability to provide security.
Objectives	Insurgents have well-defined political objectives, such as independence, political autonomy, or regime change. Their acts are a part of a larger plan to overthrow and contest current governmental institutions or organizations.	Terrorist groups can have political, intellectual, and religious goals etc. that can be advanced by acts of terrorism. These may involve toppling regimes, inciting conflict between different groups, or drawing attention to a specific cause or philosophy.

The above-mentioned chart shows that the demarcation between terrorism and insurgency depends mainly on the goals and the target groups. Insurgents target government officials and infrastructure with the aim of overthrowing the government while terrorists target civilians or non-combatants to achieve a political goal.

In Section 3(1) of the ATB portrays the target group of the so-called terrorists as the public, a section of the public, international organizations and the government of Sri Lanka, but it does not mention the purpose/aim of targeting these groups. Because the ultimate goal or the aim of the alleged act of terrorism is not mentioned, identifying an action as an act of terrorism remains vague. Within this context, terrorism can be classified as an array of activities with broader scope which might lead the state to violate human rights when targeting these activities since the proposed legislation makes no clear mention about their purpose. Therefore, in order to avoid violations of the rights of the people, it is important to understand what falls under the category of committing terrorist acts by providing a specific definition to the term 'terrorism'.

Importance of Defining the Term Terrorism

Defining the term "terrorism" in the legislation is important because it will clarify what constitutes terrorism and make it possible for legal institutions and law enforcement to properly investigate, bring charges against, and punish terrorism-related persons and groups. Because it mainly targets citizens and non-belligerents, terrorism poses a serious threat to national security. When there is a clear definition in place, the State can detect and address terrorist threats through preventive measures, intelligence collection, and counterterrorism operations

Moreover, the State is required by several international treaties and accords such as the International Convention for the Suppression of the Financing of Terrorism (1999), the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) to prohibit terrorism and work together with other States to combat it. Therefore, the State can carry out its international duties, exchange intelligence, extradite individuals, and coordinate its responses to transnational terrorist threats when a clear definition and a legal framework is in place. It is only when there is a clear definition that the State can successfully respond to and neutralize terrorist threats, allocate resources, establish capacity, and provide focused training.

Sri Lanka needs to make sure that the counterterrorism measures uphold fundamental freedoms and human rights, even while the country fights terrorism. A precise definition of terrorism aids in preventing abuses, guaranteeing suspects' due process, and striking a balance between security concerns and the preservation of civil liberties. Therefore, citizens can be more at ease knowing that the government is proactively addressing security issues by providing a definition of terrorism. By making it evident that law enforcement and the legal systems are committed to shielding citizens from terrorist attack, it increases public trust in these institutions.

To summaries, Sri Lanka needs to define the term terrorism in order to defend national security, respect human rights, and establish international cooperation. It offers the essential framework for treating terrorism as a grave criminal violation to making sure that counterterrorism operations are carried out legally and responsibly.

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