

# **Strawmanning terror: Attempting to justify the Counter Terrorism Act**

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**The current President and Government were elected in 2015 on the promise of repealing the Prevention of Terrorism Act (PTA). Since enactment in 1979, the PTA has been widely condemned for creating a draconian system featuring special detention and trial procedures for suspects of terrorism. In allowing law enforcement to act arbitrarily and with little oversight, the PTA has facilitated the use of torture within the criminal justice system and terrorised the Tamil community in particular.**

In the time since 2015, the promise of repeal has somehow acquired the postscript of “replace with counter-terrorism legislation in line with international standards”. The Government is now moving quickly to pass the Counter Terrorism Act (CTA), which is intended to replace PTA.

Several arguments have been made in support of the CTA, such as the improvements it makes over the PTA in terms of human rights and adherence to international “best practices” on counter-terrorism. This article focuses on one argument which has curiously been taken up by a number of liberal-minded civil society actors – that if the CTA is not passed now, a worse, more repressive law could be enacted during a crisis.

## **False hypotheticals**

The argument for passing the CTA immediately relies on the premise that in the event of a crisis, a future government may swiftly enact counter-terrorism legislation that is markedly more repressive than the existing CTA proposals. The hypotheticals of a sudden crisis and of frightening legislation in the future are being used to justify enacting frightening legislation now. In substance, this argument is both logically and factually unsound.

In a logical sense, this argument creates an extreme strawman that automatically justifies any legislation because something worse could always be passed. Aside from being in very bad faith, this reasoning obscures and excuses the flaws in the very real CTA. These include a very broad and ambiguous definition of terrorism; excessive detention periods without charge (up to one year) and without court access (up to 14 days); and providing members of the armed forces with police powers.

The idea of hypothetical frightening legislation also makes the CTA’s minor improvements over the PTA seem positively laudable. Certainly, the CTA does improve over the PTA in some respects, such as better safeguarding against coerced confessions. Other seemingly attractive features, like greater oversight for magistrates and the Human Rights Commission being notified at each step of a suspect’s apprehension, however, can be viewed more accurately as toothless measures since these entities are only empowered to monitor, and not prevent, abuses.

**Sri Lankans would do well to remember that when it comes to terrorism and “national security”, human rights swiftly evaporate regardless of who is in power. The UNP has**

**demonstrated its tendencies towards illiberal autocracy for decades - it was the UNP after all that enacted the PTA. The CTA is merely the next step in this tradition. It is high time to stop imagining, awaken to reality and oppose both the PTA and CTA completely and unequivocally**

The CTA's improvements are negated by its many problematic provisions, especially the entirely new regime of public security it introduces which allows curfews to be called, organisations to be proscribed (and prevented from operating), places to be prohibited from public access, and the armed forces to be called out. Together, these provisions expand the counter-terrorism framework to incorporate wider portions of the civic sphere, potentially criminalising acts of civil protest and those who engage in them, such as trade unions, the media and civil society organisations.

### **State terror and institutions**

Ten years after the end of the civil war, terrorism in Sri Lanka is a hypothetical rather than actual possibility. What is not imaginary, however, is how Sri Lanka's law enforcement and security institutions function today. There is little dispute that these institutions and their agents surveil, harass, assault and torture not just those suspected of terrorism, but ordinary citizens as well. Not a week goes by without journalists, activists and citizens in the north reporting being mistreated by security forces. Once enacted, the CTA would legalise all these practices and, more alarmingly, hand such a legal scheme on a silver platter to harsher administrations in the future.

Advocacy for the CTA relies on the belief that its expansive powers can be exercised by Sri Lanka's law enforcement institutions and their agents in a proper manner, with due care, and without being undue political influence. Forty years of experience with the PTA shows how at nearly every turn these institutions and their agents have acted with impunity when it comes to "terrorism", and have carried out, deferred to and rubber stamped the executive's most arbitrary and galling acts. Expecting them to change their behaviour overnight with the passage of the CTA is woefully naïve at best and deeply immoral at worst.

Ultimately, such vivid imaginings of legislation and faith in institutions inadvertently reveals the underlying political bias of their proponents. The current Government is entrusted to deliver human rights-friendly outcomes by virtue of the fact that it is not the feared alternative. In other words, because the CTA is a creature of the UNP and not the SLFP/SLPP, it is assumed to be inherently better, or at least not as bad as it could be.

Sri Lankans would do well to remember that when it comes to terrorism and "national security", human rights swiftly evaporate regardless of who is in power. The UNP has demonstrated its tendencies towards illiberal autocracy for decades - it was the UNP after all that enacted the PTA. The CTA is merely the next step in this tradition.

It is high time to stop imagining, awaken to reality and oppose both the PTA and CTA completely and unequivocally.

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