IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

THE BILL TITLED "PROTECTION OF THE STATE FROM TERRORISM"

In the matter of an application in terms of Article 121 read with Article 120, of the Constitution to determine whether the Bill titled "Protection of the State from Terrorism" or any part thereof is inconsistent with the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. S.D. NO 122/2026

Petitioner: Tharindu Uduwaragedara,
No 85/3 - 1/1,
Prathibimbarama Road,
Dehiwala.

Mohamed Fazeer,
No 85/3 – 1/1,
Prathibimbarama Road,
Dehiwala.

Counsel: Hejaaz Hizbullah
Attorney-at-Law

Respondent: Hon. Attorney General,
Attorney General's Department,
Colombo 12.

	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 123/2026	Petitioners:	Muhammadh Muneer Arqam, No. 4/4 Vijitha Road, Nedimala, Dehiwala. Haaja Mueenudeen Ifran, Ahamed, No. 99 S.M. Road, Maruthamunai 01. Jain Sabrin Ahamed, No. 87 Esala Children's Park Road, Rajagiriya.
	Counsel:	Hejaaz Hisbullah Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 125/2026	Petitioners:	Dias Bandaralage Ajith Shantha Kumara Jayathilaka, No. 181/B/5/D, Suhada Mawatha, Pannipitiya.

	Counsel:	Petitioner appeared in person
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 127/2026	Petitioners:	Professor G.L. Peiris, No. 37, Kirula Place, Colombo 05.
	Counsel:	MUM Ali Sabry PC Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 128/2026	Petitioners:	Centre for Policy Alternatives (Guarantee) Limited, No. 6/5, Layards Road, Colombo 05.
	Counsel:	Viran Corea PC Attorney-at-Law

	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 129/2026	Petitioners:	Kalimuthu Jeewarathnam, No. 77, Ambakote, Kengalla. Anthode Chandra, No 22, Rathwaththe Lower Division, Ukuwela. Kurukulasuriya Marius Rukshan Fernando, No 281, Deans Road, Colombo 10. Selvarani Ramaiah, No 10/1, Balagolla, Kengalla. Muttiah Rajalechchimi, No 111, Temple Road, Ambakote, Kengalla.
	Counsel:	Hejaaz Hisbullah Attorney-at-Law

	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 130/2026	Petitioners:	Habeebu Lebbe Mohamed Rifan, Attorney-at-Law Member of Parliament No. 260 A, Moulana Road, Oddamavadi. Meeramohideen Baheej, Attorney-at-Law No. 407, Cadar Odaviyar Road, Akkaraipattu 6 Anbu Mohaideen Rozan Akther, Attorney-at-Law No. 468, Mosque Road, Kalmunai 09 S.M. Mohamed Muszhaaraff, Attorney-at-Law Chairman Pottuwil Pradeshiya Sabha No. 418, Vaithiyar Road, RM Nagar, Pottuvil 27

		Mohamed Ibralebbe Sahir, No. 97/2, Town Mosque Road, Akkaraipattu 21
		Mohamed Musthapha Mohamed Aasif, No. 352A, Makkamady Road, Maruthamunai.
	Counsel:	Hejaaz Hisbullah Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 131/2026	Petitioners:	Thudugala Mudalige Pubudu Sandun Thudugala, 50, Ayesha Watta, Yakkala, Ibbagamuwa.
	Counsel:	Ermiza Tegal Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.

	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 132/2026	Petitioners:	Udaya Kalipathirana, No.45/12, Ernest Place, Lakshapathiya, Moratuwa. Bishrul Hana Ibrahim, No.11/5, Sri Jinaratne Mawatha, Rathmalana
	Counsel:	Lakshan Dias Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 133/2026	Petitioners:	Kalukapuge Ranga Thamara Kumara Bandaranayake, President, Sri Lanka Working Journalists Association, 276/3, Pradeepa Mawatha, Maligawattha, Colombo 10

		Lakshman Muthuthanthirige, Executive Committee Member Sri Lanka Working Journalists Association 690/5/31, Kulasewana Road, Kottawa
	Counsel:	Lakshan Dias Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 135/2026	Petitioner:	Prabhath Gunawardana, No.22/12, Regent City, Demanhandiya.
	Counsel:	Eraj de Silva PC Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 136/2026	Petitioner:	Phillip Pushpakumara Iddamalgoda, No.104E, Amarasena Mawatha, Kussala, Raddolugama, Seeduwa.
	Counsel:	Eraj de Silva PC Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 137/2026	Petitioners:	Kajugahapitiya Arachchige Sajeewa Anupa nandula, Senior Vice President, Ceylon Bank Employees Union No. 20, Temple Road, Colombo 10. Gabbela Kapuge Anuradha Niraj Peter, Assistant Secretary, Ceylon Bank Employees Union No. 20, Temple Road, Colombo 10
	Counsel:	Lakshan Dias Attorney-at-Law

	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 138/2026	Petitioner:	Tharindu Iranga Jayawardhana, No. 176/3, Oruthota, Gampaha.
	Counsel:	H.S. Dhanushka Emmanuel Perera Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 139/2026	Petitioner:	Ajith P. Perera 169/A, School Lane, Bandaragama
	Counsel:	Sapumal Bandara Attorney-at-Law

	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 140/2026	Petitioners:	JUSTICE FOR THE PEOPLE (GUARANTEE) LIMITED, No. 3/1, Daya Road, Colombo 06.
	Counsel:	M. A. Sumanthiran P.C Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 142/2026	Petitioners:	Udaya Prabhath Gammanpila, No.448 Kotte Road, Pitakotte.
	Counsel:	Boopathi Kahathuduwa Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.

	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 143/2026	Petitioner:	Mike Steve Greg Gabriel, No. 95,Galee road, Dehiwala.
	Counsel:	M. A. Sumanthiran P.C Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 144/2026	Petitioner:	C. V. K Sivagnanam, No. 904/5, Point Pedro Road, Nallur, Jaffna.
	Counsel:	M. A. Sumanthiran P.C Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 145/2026	Petitioners:	The Government Medical Officer's Association, No.275/75, Bauddhaloka Mawatha, Colombo 07.
	Counsel:	Lakshan Dias Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 146/2026	Petitioner:	Sivapunniyam Avinash, Arivalayam, Karanawai South, Karaveddy, Jaffna.
	Counsel:	Dr. K. Guruparan Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 147/2026	Petitioner:	Jilanie Melanie Indira Jonklaas, 17/1, Fourth Lane, Pitakotte.
	Counsel:	Sanjit Dias Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 148/2026	Petitioners:	Rangoda Hettiarachchige Senaka Perera, No. 151/2, Welagedara, Attanagalla. Wellage Sudesh Nandimal Silva, No. 397/X, Peragaha Watta, Rubberwaththa Road, Tissamaharama.
	Counsel:	Lakshan Dias Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 149/2026	Petitioners:	Darshatha Damith Gamage, 181/12, Maligakanda road, Colombo 10.
	Counsel:	A.V. Benisious Thushan Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 150/2026	Petitioners:	Arshadha Subair, No.155/22, Mohideen Masjid Road, Colombo 10.
	Counsel:	Nizam Kariapper PC Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 151/2026	Petitioners:	Ambika Satkunanathan, No. 27, Rudra Mawatha, Colombo 6
	Counsel:	Pulasthi Hewamanna Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 152/2026	Petitioners:	Rajeev Amarasuriya, The Bar Association of Sri Lanka, 153, Mihindu Mawatha, Colombo 12. Nalin De Silva, The Bar Association of Sri Lanka, 153, Mihindu Mawatha, Colombo 12
	Counsel:	J.C. Weliamuna PC Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 153/2026	Petitioners:	Atham Lebbe Aazath, Attorney-at-Law, No.367, 2/2, Dam Street, Colombo 12
	Counsel:	Thishya Weragoda Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 154/2026	Petitioners:	Ravindra Mudalige, Central Committee Member, Frontline Socialist Party, No. 22/1, Melder Place, Nugegoda.
	Counsel:	Nuwan Bopage Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 155/2026	Petitioners:	Dudeesha Duminda Nagamuwa, General Secretary, Workers Struggle Center, No. 22/1, Melder Place, Nugegoda
	Counsel:	Thanuka Nandasiri Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 156/2026	Petitioners:	Pinnaduwage Rivihara Sachith Pinnaduwa, Young Lawyers Association, No. 96/1/5, Suhadha Mawatha, Sirimal Uyana, Gampaha.
	Counsel:	Niran Anketell Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C S.D. No. 158/2026 Petitioners:

Lankapeligedara Darmasiri
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North.

Don Pubudu Randinith Jayagoda
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North.

Vethilingam Mahendran
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North.

Rajkumar Rajeevkanth
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North.

Mudalige Wasantha Kumara Mudalige
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North.

Dayapala Thiranagamage
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North

Velusamy Weerasingham
Peoples Struggle Alliance,
No. 136, Pansala Road,
Kaluthara North

	Counsel:	Nuwan Bopege Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 160/2026	Petitioner:	Malinda Channa Pieris Seneviratne, 601/2, Havelock Road, Colombo 06
	Counsel:	Nuwan Bopege Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 161/2026	Petitioners:	Suranjaya Amarasinghe, Commercial and Industrial Workers' Union, No.17, Barracks Lane, Colombo 02

	Counsel:	Nuwan Bopage Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 162/2026	Petitioners:	Muthuheen Gedara Thisara Nuwantha Anuruddha Bandara, No. 867/3, Jalasampadanagara Mawatha, Athgala, Gampola. Meregngnage Lahiru Lakmina Fernando, No.57/66, Suhada Mawata, Wekada , Panadura
	Counsel:	Srinath Perera Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 163/2026	Petitioner:	Centre For Social Studies Guaranteed Limited, No.196, Hulftsdorp Street, Colombo-12.
	Counsel:	Rudane Zahir Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 164/2026	Petitioners:	Mohammedu Bazeer Mohammed Irhan, No.114, OPA Road, Palamunai-02
	Counsel:	Rudane Zahir Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 165/2026	Petitioners:	Mohamed Ashar Mohamed Zaidh, No.195/2C, Gurukoda, Akurana.
	Counsel:	Rudane Zahir Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 166/2026	Petitioners:	Mr. Joseph Stalin, Secretary, Ceylon Teachers Union Ceylon Teachers Union Head Office, No: 65 / 4, Sir Chithmpalam A Gadiner Mawatha, Colombo 02, Sri Lanka
	Counsel:	Rushdhie Habeeb Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 167/2026	Petitioners:	Lahiru Weerasekara, Organizing Secretary, Youth for Change Organization, 383/1, Kalapaluwawa, Rajagiriya.
	Counsel:	Thanuka Nandasiri Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law
S.C. S.D. NO 168/2026	Petitioners:	Premnath Chaminda Dolawatte, 13, Lawyer Complex, Kaduwela.
	Counsel:	Thishya Weragoda Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

S.C. S.D. NO 170/2026	Petitioners:	Mahmood Lebbe Mohamed Buhary, No. 33, Railway Road, Oddamavadi-01, Batticaloa.
	Counsel:	Arshadha Subair Attorney-at-Law
	Respondent:	Hon. Attorney General, Attorney General's Department, Colombo 12.
	Counsel:	ASG Nerin Pulle PC Attorney-at-Law

Before: **P. PADMAN SURASENA, CJ.**
ACHALA WENGAPPULI, J.
SAMPATH B. ABAYAKOON, J.

The Bench assembled for hearing the petitions on 20-10-2026 and 21-10-2026.

The Bill titled "Protection of the State from Terrorism" (hereinafter sometimes referred to as the Bill or the PST Bill) was published in the Gazette on 18-09-2026 and was placed on the Order Paper of Parliament on 06-10-2026.

The above-mentioned Petitioners have filed the above numbered Petitions in the Registry of the Supreme Court invoking the jurisdiction vested in this Court by virtue of Article 120 read with Article 121 (1) of the Constitution, in respect of the aforementioned Bill. The Petitioners have prayed for a determination that some of the Clauses of the Bill and the Bill in its totality is inconsistent with the provisions of the Constitution including some of the provisions mentioned in Article 83 and therefore cannot be enacted into law, unless the number of votes cast in favour thereof amounts

to not less than two-thirds of the whole number of Members of Parliament (including those not present), and is approved by the People at a Referendum.

The Petitioners have filed the aforementioned Petitions in the Registry of the Supreme Court during the period 06-10-2026 to 19-10-2026. Upon receipt of the said petitions, Court issued notices on the Hon. Attorney General as required by Article 134 (1) of the Constitution. The learned Additional Solicitor General who appeared for the Hon. Attorney General confirmed that the copies of the Petitions of all the above-mentioned cases other than the Petition in SC/SD/170/2026 have been delivered to the Speaker, as per the requirement in Article 121(1).

Court commenced the hearing on 20-10-2026 and concluded it on 21-10-2026.

Failure of the Petitioner in SC/SD/170/2026 to comply with the provisions of Article 121(3)

Article 121(3) requires that a copy of each petition filed in terms of Article 121(3) challenging the Constitutionality of a bill shall at the same time be delivered to the Hon. Speaker. The Hon. Attorney General has tendered the letter dated 21st October 2026 submitted by the Secretary General of Parliament which confirms that the Hon. Speaker of Parliament has not received copies of the Petition in SC/SD/170/2026.

In the **Sri Lanka Telecommunications Bill**,[1] this Court, having considered the submission of the learned Counsel for the petitioner that compliance with the requirements of Article 121(1) is directory and not mandatory, stated as follows:

> "This purpose of the Article cannot be achieved unless the provisions designed to secure such result are regarded as mandatory. The Article also provides for the suspension of the ordinary legislative powers of Parliament for a period of 3 weeks when a Bill is referred to the Supreme Court for its adjudication – Article

[1] Decisions of the Supreme Court on Parliamentary Bills (1991-2003), Volume VII, 23 at page 25.

121(2). The aims of the Article will be defeated unless its scope is wide enough to prevent Parliament from debating or proceeding with the Bill whilst the Supreme Court is engaged in deliberating its constitutionality. This provision which requires Parliament to be informed that the Bill is before the Supreme Court – Article 121(1) must be regarded as mandatory."

This Court has consistently taken this approach in many cases: vide **Homoeopathy Bill**,[2] and in the **Poisons, Opium and Dangerous Drugs (Amendment) Bill**[3] Accordingly, Court decided to reject in limine, the Petition in SC/SD/170/2026 for non-compliance with the mandatory procedure stipulated in Article 121 (1) of the Constitution since the Petitioner in SC/SD/170/2026 has failed to deliver a copy of his Petition to the Hon. Speaker at the same time he has filed the Petition in that case.

Clause 3

All the Petitioners challenged Clause 3 of the Bill which has defined the Offence of Terrorism. Therefore, let us reproduce below Clause 3 of the Bill in its entirety:

(1) Any person who, intentionally or knowingly, commits any act which causes a consequence specified in subsection (2), with the purpose of-

(a) provoking a state of terror in the public or a group of persons; or

(b) unduly compelling a government or an international organisation, to do or to abstain from doing any act,

in order to advance a political or ideological objective, commits the offence of terrorism.

(2) A consequence referred to in subsection (1) shall be

(a) death of a person;

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[2] Decisions of the Supreme Court on Parliamentary Bills (2016-2017), Volume XIII, 51.

[3] Decisions of the Supreme Court on Parliamentary Bills (2022), Volume XVII, 223.

(b) grievous hurt;

(c) hostage taking;

(d) serious damage to any place of public use, any public property, any public or private transportation system or any infrastructure facility, which causes a likelihood of danger to life or substantial economic loss;

(e) serious or long-term damage to the environment, which causes a likelihood of danger to life or substantial economic loss;

(f) serious risk to the health and safety of the public or a section of the public, which causes a likelihood of danger to life or substantial economic loss;

(g) disablement, destruction of, extensive damage to, or interference with any electronic or automated or computerised system or network, including critical information infrastructure or cyber environment of domains assigned to, or websites registered with such domains assigned to Sri Lanka, which causes a likelihood of danger to life or substantial economic loss;

(h) destruction to tangible cultural property, which causes a likelihood of danger to life or substantial economic loss or serious loss of cultural heritage of national or international significance;

(i) extensive obstruction or damage to, or interference with any electronic, analogue, digital or other wire-linked or wireless transmission system, including signal transmission and any other frequency-based transmission system, which causes a likelihood of danger to life or substantial economic loss; or

(j) an act which constitutes an offence under the relevant enactment, within the scope of or within the definition of any of the Treaties specified in the First Schedule.

(3) For the purpose of subsection (2)

"hostage taking" means the seizure or detention of a person, accompanied by a threat to kill, injure, or continue to detain that person; and "place of public use" includes any highway and any other premises or place to which at the material time the public has or is permitted to have access, whether as of right or otherwise.

(4) The fact that a person –

(a) engages in any protest, advocacy or dissent or engages in any strike, lockout or other industrial action; or

(b) engages in the provision of humanitarian and medical activities by humanitarian organisations in accordance with written law,

is not by itself a sufficient basis for inferring that such person-

(i) commits or attempts, abets, conspires, or prepares to commit any act with the intention or knowledge as specified in subsection (1); or

(ii) intends to cause or knowingly causes an outcome specified in subsection (2).

The primary submission made by the Petitioners with regard to Clause 3 of the Bill is the complaint that it is so over broad and vague. The Petitioners sought to argue that it therefore has a cascading effect across the Bill as a whole.

The Petitioners also sought to argue that Clause 3 of the Bill is inconsistent with Article 14(1) of the Constitution which asserts the entitlement of the people of their fundamental right to freedom of speech, assembly, association, occupation, movement etc. It is the submission of the Petitioners that since the Sovereignty of people includes their fundamental rights as per Article 3 of the Constitution and since Article 14(1) of the Constitution is an Article which has set out one of the fundamental rights of the people, Clause 3 of the Bill is inconsistent with Article 3 of the Constitution.

Many Petitioners submitted that any trade union action, strike and protest generally engaged in, by members of various trade unions, political parties or any other group of persons gathered to protest against some action taken or proposed to be taken by the government could be encompassed within the definition of Clause 3 of the Bill. Petitioners sought to argue that such protests could be considered as acts done to 'unduly compel a government or an international organisation, to do or to abstain from doing any act.'

However, we observe that the Petitioners have made this submission because they have read only one or two individual limbs in isolation without reading Clause 3 as a whole (inclusive of all its limbs).

We observe that the following ingredients are necessary to constitute the offence of terrorism as per Clause 3 of the Bill. They are as follows:

(i) Commission of an act (actus reus of the Offence);
    I. The consequences of the act committed must be one of those specified;
    II. The doer must have committed the act for one of the two purposes specified in Clause 3(1) of the Bill;
(ii) the doer must have had the requisite intention or knowledge (mens rea of the Offence);

Thus, a person who merely engages himself in a peaceful protest i.e., a person who does not have any intention or knowledge to commit any act which causes a consequence specified in Section 3 (2), for one of the purposes specified in Clause 3(1) cannot by any yardstick be categorized as a person having committed the offence of terrorism according to the definition in Clause 3 of the Bill.

The definition of terrorism meets international standards

Another submission made before us by the Petitioners is that the definition of the offence of terrorism contained in Clause 3 of the Bill is not in accordance with the international standards.

We observe that the Special Rapporteur of the Human Rights Council of the United Nations General Assembly in its sixty first session on the promotion and protection of human rights and fundamental freedoms while countering terrorism, has recommended the following definition as the Special Rapporteur's revised model definition of terrorism:

> **III. Recommendations**
>
> 68. The Special Rapporteur's revised model definition of terrorism, which should be interpreted in the light of the discussion above, is as follows:
>
> 1. Any person commits a terrorist offence if that person, by any serious criminal act, intentionally causes death, serious bodily injury, or hostage-taking, where:
>
> (a) The purpose of the conduct, by its nature or context, is:
>
> (i) To provoke a state of terror in the public or a group of persons; or
>
> (ii) To unduly compel a Government or an international organization to do or to abstain from doing any act;
>
> (b) The conduct is intended to advance a political or ideological purpose, which must be a substantial purpose; and
>
> (c) The conduct, given its nature or context, intentionally causes serious damage to a country or an international organization.
>
> 2. A terrorist offence does not include:

(a) An act of advocacy, protest, dissent or industrial action that does not intentionally cause death or serious bodily injury;

(b) Conduct committed in armed conflict that does not violate international humanitarian law;

(c) The provision of humanitarian activities by impartial humanitarian organizations in accordance with international humanitarian law;

(d) The activities of State military forces in the exercise of their official duties, inasmuch as they are in accordance with international law; and

(e) An act intended to establish or re-establish democracy, constitutional Government or the rule of law, or to exercise or safeguard human rights

69. The Special Rapporteur does not recommend including acts endangering life or harm to property in an international definition. However, since these are already included in many national laws, regional instruments and the draft comprehensive convention, if such offences are retained, to prevent their abuse in practice it is recommended to limit them as per the following sample physical conduct elements. The specific intent, motive, and context elements in paragraph 68 (1) (a)–(c) above would also apply.

Any person commits a terrorist offence if that person, by any serious criminal act, intentionally causes

- A high likelihood of danger to life
- Extensive destruction of public places, public transport, public property, State facilities, or other critical infrastructure, which intentionally causes a high likelihood of danger to life or major economic loss

- Extensive destruction to tangible cultural property, which intentionally causes a high likelihood of danger to life, major economic loss, or serious loss of cultural heritage of national or international significance
- Disablement, extensive damage or destruction of, or serious interference with, an electronic system, which intentionally causes a high likelihood of danger to life or major economic loss
- Severe and widespread, or long-term, damage to the environment, which intentionally causes a high likelihood of danger to life or major economic loss.[4]

Having regard to the above revised model definition of terrorism recommended by the afore-said Special Rapporteur, we are unable to see how the definition of the offence of terrorism contained in Clause 3 of the Bill is not in accordance with the international standards.

Additionally, we would set out below, the definitions to terrorism adopted by New Zealand and Australia.

New Zealand Definition of Terrorism as mentioned in Section 5 of the Terrorism Suppression Act, 2002 is as follows:

(1) An act is a terrorist act for the purposes of this Act if-

(a) the act falls within subsection (2); or

(b) the act is an act against a specified terrorism convention (as defined in section 4(1); or;

(c) the act is a terrorist act in armed conflict (as defined in section 4(1);

[4] A/HRC/61/52 08 January 2026.

(2) An act falls within this subsection if it is intended to cause, in any 1 or more countries, 1 or more of the outcomes specified in subsection (3), and is carried out for 1 or more purposes that are or include advancing an ideological, political, or religious cause, and with the following intention:

(a) to intimidate a population; or

(b) to coerce or to force a government or an international organisation to do or abstain from doing any act.

(3) The outcomes referred to in subsection (2) are-

(a) the death of, or other serious bodily injury to, 1 or more persons (other than a person carrying out the act):

(b) a serious risk to the health or safety of a population:

(c) a destruction of, or serious damage to, property of great value or importance, or major economic loss, or major environmental damage, if likely to result in 1 or more outcomes specified in paragraphs (a), (b), and (d):

(d) serious interference with, or serious disruption to, critical infrastructure, if likely to endanger human life:

(e) introduction or release of a disease-bearing organism, if likely to cause major damage to the national economy of a country.

(4) However, an act does not fall within subsection (2) if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.

(5) To avoid doubt, the fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout, or other industrial action, is not, by itself, a sufficient basis for inferring that the person-

(a) is carrying out an act for a purpose, or with an intention, specified in subsection (2); or

(b) intends to cause an outcome specified in subsection (3).

Australian Definition of Terrorism as mentioned in Criminal Code Act 100.1 is as follows:

(1) Terrorist act means an action or threat of action where:

(a) the action falls within subsection (2) and does not fall within subsection (3); and

(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the action is done or the threat is made with the intention of:

(i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or

(ii) intimidating the public or a section of the public.

Elements of the definition of terrorist act

(2) Action falls within this subsection if it:

(a) causes serious harm that is physical harm to a person; or

(b) causes serious damage to property; or

(c) causes a person's death; or

(d) endangers a person's life, other than the life of the person taking the action; or

(e) creates a serious risk to the health or safety of the public or a section of the public; or

(f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:

(i) an information system; or

(ii) a telecommunications system; or

(iii) a financial system; or

(iv) a system used for the delivery of essential government services; or

(v) a system used for, or by, an essential public utility; or

(vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended:

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

The above definitions of terrorism from New Zealand and Australia also show us that the offence of terrorism contained in Clause 3 of the Bill is not a definition that Sri Lanka has arbitrarily adopted for ulterior motives. We further observe that it is the same words and phrases (such as 'serious risk', 'serious damage', 'serious interference') that those countries also have used in defining the terrorism in their respective legislations. Thus, the contentions of the Petitioners that the definition of the offence provided for in Clause 3 is over broad and vague and lacks international standard are contentions without merit. Those contentions do not stand to reason.

Moreover, it was Sri Lanka's own experience that terrorists have many a time attacked State property and infrastructure, to cripple the State economically and financially, rather than focusing on causing death, serious bodily injury or hostage taking. Attacks on Katunayake Airport, Sapugaskanda Oil Refinery Facility, attempt to launch an attack on the harbour are some of them. We cannot disregard those factual positions because the destructions of such magnitude are capable of immediately crippling the government which would directly affect the security and wellbeing of the general citizenry of the country.

This Court proceeded to highlight the effect of economic downturn on the People in the case of Dr. Athulasiri Samarakoon and Others v. Ranil Wickremasinghe, Minister of Finance,[5] in the following terms:

> "In deciding this issue, we are of the view that the respondents ought to have known the factual situation that prevailed when they assumed public office and they should have fashioned their acts and efforts to ensure that the situation is not further aggravated but resolved. On assumption of public office, it was their duty to ensure that the existing issues were addressed and resolved in the best interest of the country and take every possible measure to avoid an aggravation to the detriment of the people.
>
> …
>
> It is common grounds that the country's economy deteriorated not overnight but over a period of time under consideration in the matters before us. It was evident from the material placed before us that the Gross Official Reserves and the Reserves of the Central Bank were depleted and had reached unprecedented low levels, creating a situation of which the effects were devastating on the entire citizenry without exception. The severe hardships the people had to suffer due to scarcities in essentials such as fuel, gas and medicines coupled with long hours of power shortages brought

[5] SC FR/195 and SC FR 212/2023, SC Minutes of 2023-11-14 at page 115.

> the lives of people to a standstill and the suffering the public had to undergo was undoubtedly immeasurable.
>
> The respondents holding high public offices bestowed with powers bear a direct Impact on the lives of the people, we presume, were alive to the Direct Principles of State Policy and Fundamental Duties. They were duty bound to discharge in the manner spent out in the directive principles in our Constitution."

The Petitioners submitted many phrases found in clause 3 of the bill as examples of vagueness. These phrases include the following: "Hostage taking", "Provoking a state of terror"; "Unduly compelling"; "A group of persons"; "Intentionally or knowingly"; "In order to advance a political or ideological objective"; "Substantial economic loss".

However, we observe that New Zealand in its definition of terrorism also has used phrases such as "serious risk to the health or safety of a population", "destruction of, or serious damage to, property of great value or importance", "major economic loss" "major environmental damage", "serious disruption to, critical infrastructure".

Australia also has used phrases such as "serious harm, serious damage to property, seriously disrupts or destroy" in its definition of terrorism.

We observe that even routinely used other laws such as the Penal Code have not gone to the extent of itemizing all possible acts that a person would possibly commit. This is because no-one can be certain as to how such person would choose to commit such act in the future. What is criminalized by law generally is a wider act with specific ingredients. The specific particular act that an accused may have committed is only specified in the charge when such person is prosecuted. The offence of terrorism on the other hand involves situations where a person acts in furtherance of his terrorist related objectives the modus operandi of which is difficult to predict. Furthermore, the

Petitioners although criticized Clause 3 of the Bill as being vague, do not propose any alternative way to replace it to remove the complained alleged vagueness.

In the above circumstances we are unable to accept the argument of the Petitioners that the definition of terrorism in Clause 3 of the Bill is vague.

Clause 3(4) of the Bill

The Petitioners further sought to argue that the effect of the carving out in Clause 3(4) of the Bill would render persons who engage in any protests, strikes, lockouts or other industrial actions as well as the persons who engage in the provision of humanitarian and medical activities through lawfully established humanitarian organisations would become liable for prosecutions as such persons too could be taken as having committed an act of terrorism under this definition.

Some of the Petitioners cited below examples as some of such trade union actions:

- a strike by health sector workers seeking to compel the government to increase their salary or withdraw a policy decision which disrupts hospital services could be said to cause "serious risk to the health and safety of the public or section of the public which causes the likelihood of danger to life" and hence could 3(2)(f) as it contains a clause "unduly compelling a government" [Clause 3(1)(b)] in order to advance a political objective.

- workers at a state broadcasting or telecommunications institution who engages themselves in a trade union action in protesting against the government could be said to cause "extensive obstruction… or interference with any … transmission system… which causes …. substantial economic loss" [Clause 3(2)(I)] or "interference with any… computerized system or network" [Clause 3(2)(g)] read with Clause 3(1)(b).

In 2024 the Parliament sought to enact the Bill titled "Anti terrorism" which was challenged by some persons in this Court. In the course of that Determination this Court held that (Para 218 of AG's W/S) the definition in Clause 3 of the 'Anti Terrorism Bill' is inconsistent with Article 12(1) of the Constitution and thus requires a special majority. In the same Determination, this Court also held that the afore-said inconsistency would cease to exist if the amendments suggested therein are adopted (vide 70-71). This suggested amendment includes the carve out which the Government has now adopted in Clause 3(4) of the PST Bill.[6] The above reflects clearly that the carving out in Clause 3(4) of the PST Bill cannot now be said to be inconsistent with the provisions of the Constitution. Therefore, we are unable to agree with the above submission of the Petitioners with regard to Clause 3(4) of the Bill.

Argument that the Bill as a whole is inconsistent with the Constitution

The Petitioners have also challenged some other Clauses in the PST Bill. We think it would be pertinent to mention at this juncture the legislative history and the background in which the Government has now sought to enact this Bill. This is because this Court is obliged to consider the PST Bill in the context of its legislative history. It was the submission of the learned Additional Solicitor General that 'determinations', 'judgments', 'opinions' of the Supreme Court are the same and therefore shall have effect as Court's precedences. He relied on the judgment in Bandaranaike v. Attorney General.[7] Moreover, in Bulathsinhala Arachchige Indrani Mallika vs. Bulathsinhala Arachchige Siriwardane and Others,[8] Samayawardhena J. who considered the binding effect of the previous determinations/judgments/conclusions etc. of this Court in line with the doctrine of stare decisis also has observed as follows:

> "This doctrine is not a rule of statute but a concomitant of judicial comity. The main object of stare decisis is to ensure the uniformity, consistency, certainty and

[6] Page 70-71 of Sc SD 122, 123, 125, 127-133, 135-140, 142-156, 158-168/2026.

[7] [1982] 2 Sri LR 786 at 792.

[8] SC/Appeal/160/2016, SC Minutes of 02-12-2022.

> predictability of the law. Let the law be stable rather than perfect is the rationale of this doctrine. It is conceded that one of the hallmarks of any good decision-making process is consistency. If the law is uncertain, people will find it difficult to conduct their day-to-day affairs: they enter into agreements, purchase properties etc. predicting fixed legal consequences. If a decision on identical facts is to change from one division of the Court to another, not only individuals but the whole system will suffer."[9]

The first piece of law enacted with a view to fight terrorist acts by Parliament was the Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law No. 16 of 1978 which directly and specifically dealt with terrorism. However, subsequently, Section 30 of the Prevention of Terrorism Act No. 48 of 1979 (PTA) repealed the afore-mentioned Law No. 16 of 1978. We observe that subsequent to the reference to the Supreme Court by the President under Article 122(1)(b) of the Constitution 'for determination whether the Bill or any provision thereof is or are inconsistent with the Constitution' this Court in its determination held that the 'Bill does not require the approval of the People at a referendum nor is it one within the contemplation of Article 83 of the Constitution.' After this Determination, the PTA was passed by a special majority in Parliament. We are aware that the PTA (Bill) was referred by the President with the commitment that it would be passed by a two-thirds majority in Parliament and therefore this Court was not required to consider whether the Bill was required to be passed by a two-thirds majority. The only question before this Court was whether the Bill or any provision thereof required a referendum.

We also observe that the original version of the PTA has gone through several amendments over the period of time and those Amendment Bills were challenged before this Court. Thus, the provisions in the PTA as they appear at present are provisions which do not attract the application of Article 83 of the Constitution.

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[9] At 14-15.

The next attempt to replace the PTA was with the 'Counter Terrorism Bill'. This too was challenged before this Court. In its Determination, this Court having considered rigours of the PTA went on to hold as follows:[10]

> "Since the Prevention of Terrorism (Temporary provisions) Act No. 48 of 1979 is an existing law Court will have to consider the fact that it is consistent with the Constitution. If the existing law is consistent with the Constitution, relaxation of that law cannot violate the Constitution."

The above principle was also adopted by this Court in 'Anti-Terrorism Bill'.[11]

The following chart which contains a comparison of the contents of PTA would show that the PST Bill is a much more relaxed version of the PTA.

CLAUSE	HOW IT RELAXED THE RELEVANT PROVISION IN PTA
Preamble	The Preamble of PST Bill clearly identifies the need to balance national security with fundamental rights of people.
2	The PSTA provides for the 'application of the Act in accordance with the principles in international law which govern jurisdiction, which is especially important given that the Bill seeks to address international/transnational terrorism in addition to domestic terrorism.
3	The PSTA Bill provides for a comprehensive definition of terrorism in comparison whereas the PTA, does not contain a definition of terrorism. The PTA merely lists a series of offences to section 2(1) of the PTA.
4	The PSTA Bill does not contain a minimum mandatory sentence which is a deviation from Section 2(2) of the PTA. PST Bill has only provided for a maximum sentence which is a salutary provision to preserve judicial discretion in sentencing.
6-16	The PST Bill has defined the offences narrowly excluding those engaged in legitimate exercise of their fundamental rights.
21, 22	Disclose certain information to the person being arrested at the time of the arrest; carrying out the arrest with due regard to the privacy of a suspect;

[10] SC SD 41-47/2018 at page 91.

[11] Supra at pages 48-49.

CLAUSE	HOW IT RELAXED THE RELEVANT PROVISION IN PTA
26	A duty to produce the suspect before the Magistrate within 48 hrs of the arrest irrespective of whether a detention order has been issued or not.
52-53	Allows for the deferment and suspension of criminal proceedings.
44(3) & 56	PST Bill has done away with admissibility of confessions made to Police officers a marked deviation from the PTA.

Having regard to the improvements made in the PST Bill (only some of them have been mentioned in the chart above) we are unable to accept the submission of the Petitioners who stated that the PST Bill is in fact a "PTA plus."

The Petitioners sought to argue that the provisions of the Bill lacks the judicial oversight and lacks adequate checks and balances against abuse of the powers it has conferred on the Executive.

In the Determination with regard to the Agrarian Services (Amendment) Bill,[12] this Court held as follows:

> "There is of course the possibility that an attempt might be made to implement the Bill, after enactment, in a manner inconsistent with the Constitution. Our jurisdiction does not exceed, quia timet, to make pronouncements intended to prevent or restrain possible future violations, particularly by person or bodies other than the legislature, our jurisdiction is confined to determining whether the Bill as it stands would constitute an infringement of the Constitution."

This Court took the same approach in its Determination with regard to the Code of Criminal Procedure (Amendment) Bill,[13] and in the Determination regarding the Welfare Relief Benefits Bill.[14]

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[12] SC SD 2/1991.

[13] SC SD 7/2002.

[14] SCSO No. 2/1988 (Spl.)

It is also important to note that this Court by majority in its Determination regarding the Twentieth Amendment to the Constitution Bill,[15] observed that "a decision on the inconsistency or consistency with a Constitutional provision cannot be based on surmise and conjecture."

In the Determination regarding the Bureau of Rehabilitation Bill,[16] this Court held:

> "In considering the application of a bill or its provisions, it is only plausible and real-world possibilities that would be entertained by this Court. The threat of potential abuse should not be based on fanciful hypotheses, and should always be guided by the perspective of the proverbial reasonable person. There should be a realistic possibility that the provisions of the Constitution would be abused through the provisions of the law."

Therefore, we agree with the submission of the learned Additional Solicitor General that the provisions of this Bill must be assessed on the safeguards actually contained in it rather than on hypotheses that the relevant officers charged with the powers under the Bill may disregard those safeguards.

Moreover, the contents of the following chart would show how the PST Bill has specifically provided for safeguards and judicial oversight with a view of preventing the abuse of executive power by those charged with such powers.

CLAUSE (PST)	HOW PST BILL HAS PROVIDED FOR SAFEGUARDS & JUDICIAL OVERSIGHT
Preamble	The Preamble of PST Bill clearly identifies the need to balance national security with fundamental rights of people.
26	A duty to produce the suspect before the Magistrate within 48 hrs of the arrest irrespective of whether a detention order has been issued or not.

[15] SC SD 1-39/2020.

[16] SC SD 54-61/2022.

CLAUSE (PST)	HOW PST BILL HAS PROVIDED FOR SAFEGUARDS & JUDICIAL OVERSIGHT
27(2)	Even when there is a detention order the suspect must be produced before a Magistrate and a certified copy should be placed before the Magistrate for Inspection.
27(6)	Copy of every detention shall be served on the suspect within 48hrs and the acknowledgement by the suspect shall be filed in the Magistrate's Court.
28	Detention beyond two months only with the approval of the High Court. Therefore, any detention by the Executive is limited to 02 months only.
28(7)	A suspect detained under a detention order shall be produced before a Magistrate every fourteen days.
29	High Court has jurisdiction to release the suspect on bail.
37(3)	After completion of investigation, the Magistrate can discharge the suspect if the report contains no allegation that the suspect committed an offence under the Act.
37(5)	If investigation in respect of a person discharged is to resume, the Magistrate shall be informed of the resumption and completion of further Investigation.
44(1)	Order of the Magistrate required to request suspect to submit an affidavit or tender any document or thing relevant to the investigation.
44(7-8)	Audio-visual recording of the interview can only be dispensed with after obtaining approval of the Magistrate. Copy of audio-visual recording shall be produced before the Magistrate.
46(2)	Taking control of vehicles and vessels must be reported to the Magistrate.
47	Suspension or delaying the taking off or sailing of a vessel or aircraft requires an order of the Magistrate.(Where power is exercised in circumstances of urgency, subsequent approval of the Magistrate within 24 hrs is required).
59(5)(b)	Person aggrieved by a proscription order or decision in reconsideration of a proscription order can apply to the Court of Appeal for judicial review.
60	Restriction orders are issued by the Magistrate and High Court and Court of Appeal have power of revision/judicial review.
61	Orders relating to prohibited places beyond 72 hrs requires authorization of the Magistrate, and the Magistrate exercises power of judicial review.
71	Person aggrieved by any decision, determination, order, directive or direction can seek relief in terms of the Constitution or any other law.

CLAUSE (PST)	HOW PST BILL HAS PROVIDED FOR SAFEGUARDS & JUDICIAL OVERSIGHT
4	The PSTA Bill does not contain a minimum mandatory sentence which is a deviation from Section 2(2) of the PTA. PST Bill has only provided for a maximum sentence which is a salutary provision to preserve judicial discretion in sentencing.
6-16	The PST Bill has defined the offences narrowly excluding those engaged in legitimate exercise of their fundamental rights.
52-53	Allows for the deferment and suspension of criminal proceedings.
44(3) & 56	PST Bill has done away with admissibility of confessions made to Police officers a marked deviation from the PTA.

Having regard to the above provisions in the PST Bill (only some of such provisions have been mentioned in the chart above) we are unable to accept the submission of the Petitioners that the provisions of the Bill lacks the judicial oversight and lacks adequate checks and balances against any possible abuse of powers it has conferred on the Executive.

Proscribed Organizations

For a person to be criminally liable for having committed the offence of terrorism under Clause 3, that person must have committed an act intentionally or with the knowledge that such act would cause a consequence specified in Clause 3(2). The said consequences specified in Clause 3(2) are firstly provoking a state of terror in the public or a group of persons; or secondly, unduly compelling a government or international organization to do or abstain from doing any act in order to advance a political or ideological objective.

This however must be read in conjunction with Clause 3(2) which has specified the aforesaid consequences. The said consequences are things such as: death of a person; grievous hurt; hostage taking; serious damage to public property; serious or long-term

damage to the environment etc. We observe that all the items listed under Clause 3(2) are very serious offences even under the normal law. If the intention of the protesting person is one of those specified under Cause 3(2), then we are unable to accept that such person is a person engaged in peaceful protest. We observe that all the above items that we have listed above would affect other people other than the protesting person and therefore should not be permitted.

In the case of Janath S. Vidanage and Others v. Pujith Jayasundara, Inspector General of Police,[17] a seven-judge bench of this Court examined the linkage between individual liberty and National Security as well as the duties assigned to the Minister of Defence and the President with respect to defence and security as stated as follows:

> "A conjoint reading of the constitutional imperatives such as Articles 4(b), 30(1), 44(2) and 52(2) makes it patently clear that the Minister of Defence is placed under a charter of duties and obligations from which he cannot resile as regards national security and internal security of the country. It is often said that national security and liberty of individuals stand out as two sides of a coin which binds the state to a strong commitment. On the day in question, to wit the 21st of April 2019, the President of the country who was also the Commander-in-Chief of the Armed Forces had undertaken these obligations which our Constitution, domestic laws and regulations, amply declare aloud demanding allegiance to the commitment of maintaining defence and security of the nation."[18]

We observe that one major limb, the sovereignty of the people as per Art 4(b) of the Constitution is "the executive power of the people including the defence of Sri Lanka….." which shall be exercised by the President (the executive).

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[17] SC/FR/163, 165, 166, 184, 188, 191, 193, 195-198, 293/2019, SC Minutes of 2023.01.12.

[18] Paragraph 69.

Furthermore, we also observe that the Constitution has laid down directive principles of state policy in Article 27 of the Constitution. Article 27(3) and Article 27(15) could be relevant for the present discussion.

Article 27(3):

> The State shall safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka.

Article 27(15):

> The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.

It is also important to note that Article 27(1) has stated that the above directive principles "shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society." We have no reason to hold that the government has not formulated this Bill in keeping with the above directive principles which are principles enshrined in the Constitution.

If the country is ridden with terrorist activities, obviously the primary concern that every citizen of the country would have, is their protection. This is not a country where terrorist activities have never happened. There was a time where the person who leaves home for work was not sure of returning home after work. The indiscriminate bomb explosions that occurred particularly in the city of Colombo was so prevalent during that time. When such incident of explosions happen, most of the time the law enforcement authorities could not trace those who were responsible for such acts of explosions

instantly. This is a kind of situation this court adverted to in Kumaranatunge v. Samarasinghe, Additional Secretary, Ministry of Defence and Others[19] as follows:

> "I have already pointed out that the freedom from arbitrary arrest and detention guaranteed by Articles 13(1) and (2) of the Constitution is subject to such restrictions as may be prescribed by law in the interests, inter alia, of national security and public order. Law in this context is defined as including "regulations made under the law for the time being relating to public security". It is well recognised that individual freedom has in times of public danger to be restricted when the community itself is in jeopardy, when the foundations of organised government are threatened and its existence as a constitutional state is imperilled."

Similarly, this court in Joseph Perera alias Bruten Perera v. The Attorney General and Others[20]:

> "Article 14 of the Constitution deals with those great and basic rights which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country. Freedom of speech…goes to the heart of the natural right of an organized freedom-loving society to impart and acquire information….This freedom is not absolute. There is no such thing as absolute or unrestricted freedom of speech and expression, wholly free from restraint; for that would amount to uncontrolled license which would tend to disorder and anarchy. Absolute and unrestricted individual rights do not and cannot exist in a modern State. The welfare of the individual, as a member of collective society, lies in a happy compromise between his rights as an individual and the interests of the society to which he belongs… Our Constitution has rightly struck a proper balance between varying competing social interests, and has… set forth the restrictions to which the fundamental right of speech and expression may be subject to…"

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[19] [1983] 2 Sri LR 63 at 80-81.

[20] [1992] 1 Sri LR 199.

Similarly, the Supreme Court in its Special Determination on the Anti-Terrorism Bill,[21] held at 12 as follows:

> "In all these endeavors across the globe to deal with terrorism which has not spared South Asia, the tension between balancing human rights and national security has been acutely felt and an issue of institutionalizing a proper relationship between national security concern and the need to protect and advance fundamental rights and personal freedoms or liberties of the citizenry did indeed occupy the front burner of the majority of the submissions made before this Court in the course of these proceedings. Pivotal to the central theme of the arguments as the all-embracing eternal verity of the Rule of Law which the Petitioners contended the impugned Bill does not seek to satisfy given the fact that the law must afford adequate protection of fundamental human rights subject to their necessary and proportionate derogations. At the very inception this Court would wish to set down these central themes of argument vis-à-vis the contention of the State that this proposed legislation addresses these concerns by putting in place appropriate safeguards in such a manner as to achieve the proper balance between the competing interests. This Court acknowledges the fact that a comprehensive legislation on counter terrorism must seek to balance national security concerns with human rights, while embodying inter alia, international standards and best practices across the globe."

Furthermore, This Court in the Special Determination on the Online Safety Bill,[22] stated in reference to the scourge of cybercrime as follows:

> "In the circumstances, the State has a responsibility to enact legislation to prevent such crimes and protect the people of this country. Such legislation will secure the equal protection of the law enshrined in Article 12(1) of the Constitution. Thus, the determination in Sri Lanka Broadcasting Authority Bill

[21] SC/SD/01-7, 10, 12, 13, 18-38/2026.

[22] SC/SD/66-69, 71-77, 79-81, 83-85, 87-101, 103-107, 109, 111-112, 115-118, 120/2023.

> (SC/SD/1/1997-15/1997) has no application to the instant Bill. In any event, most of the laws are enacted to prevent committing crimes. Hence, Parliament need not wait till a crime is committed to enact laws."

It is an accepted fact that all civilized countries in the world unequivocally condemn terrorism. Thus, Sri Lanka also has an international obligation to enact laws to combat terrorism. This is why this court in its determination in the Anti-Terrorism Bill,[23] referring to United Nations Security Council resolutions held as follows:

> "Thus, it is imperative that the exhortation of the UN Security Council to enact laws criminalizing terrorist acts binds member states and it is in accord with such an international obligation the countries have been placed under an obligation to enact its own domestic counter terrorism laws and Sri Lanka cannot lay claim to any exception to this onerous duty."

We observe that the United Nations Security Council has time and again accepted and reaffirmed the fact that terrorism is one of the most serious threats to international peace and security. This was re-iterated in UNSCS/RES/2178 (2014):

> "Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed, and remaining determined to contribute further to enhancing the effectiveness of the overall effort to fight this scourge on a global level. Noting with concern that terrorism threat has become more diffuse, with an increase, in various regions of the world, of terrorist acts including those motivated by intolerance or extremism, and expressing its determination to combat this threat."

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[23] supra.

We observe that this court in the case of Janath S. Vidanage and Others v. Pujith Jayasundara, Inspector General of Police,[24] quoted another UNSC resolution UNSC Resolution S/RES/2253 (2015). It is worthwhile to reproduce the relevant part from the said UNSC Resolution below:

> "Reaffirming that terrorism in all forms and manifestations constitutes one of the most serious threats to peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever, wherever, and by whomsoever committed, and reiterating its unequivocal condemnation of the Islamic State in Iraq and the Levant (ISIS, also known as Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities for ongoing and multiple criminal terrorist acts aimed at causing the deaths of innocent civilians and other victims, destruction of property, and greatly undermining stability, Recognizing that terrorism poses a threat to international peace and security and that countering this threat requires collective efforts on national, regional and international levels on the basis of respect for international law and the Charter of the United Nations."

The Petitioners contended that if this Bill becomes law, Clause 59 would make it possible for the President to proscribe a political party or organization or trade union if such organization engages in any activity to oppose the government on some political ideology. It is on that basis that the Petitioners sought to argue that Clause 59 would be inconsistent with the provisions of the Constitution.

We have already adverted to the need and the obligation on the government to counter terrorism. This is an international obligation. We know that a terrorist act is committed by and on behalf of a terrorist organization. On the other hand, if such organization is allowed free operation within the country the government would fail in its obligation both locally and internationally. Furthermore, there is no justification to allow such organization to operate freely. We have already adverted to above that the task of

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[24] SC FR 163, 165, 166, 184, 188, 191, 193, 195-198, 293/2019, SC Minutes 12-01-2023.

ensuring the security of the country is vested with the executive. This is an integral part of the sovereignty of the people.

We observe that there are number of safeguards put in place to balance the fundamental rights of the people, before the President could decide to proscribe any such organization. As per Clause 59(1) it is only when the President has reasonable grounds to believe that any organization is engaged in any act amounting to an offence under this act that the President can proceed to proscribe such organization. Thus the power conferred on the President by Clause 59(1) is not unfettered.

Clause 59(5) has provided another safeguard by making a provision for any person or organization aggrieved by such proscription order to apply to the President for reconsideration or cancelation of such proscription order. This is in addition to the jurisdiction conferred on the Supreme Court for judicially reviewing such proscription order made by the President. This is specifically provided for in Clause 59(5)(b).

In view of such safeguards we are unable to accept the argument advanced by the Petitioners that Clause 59(6) which states that a proscription order made under this section will remain valid until rescinded, would lead to indefinite period of proscription. This is because there are remedies provided for a person or any organization aggrieved by such order made by the president.

Clause 6

The Petitioners sought to argue that the Bill through this Clause has taken away right of persons to join, engage in organizational work and participate in the activities of an Association of their choice. They further sought to argue that this Clause has conferred an unbridled power on the Executive to prosecute such persons. Let us reproduce below Clause 6 for convenience.

Any person who, within Sri Lanka or outside Sri Lanka, intentionally-

(a) joins a proscribed organisation;

(b) recruits any person for a proscribed organisation;

(c) provides funds, financial services, properties, equipment, training, logistical assistance or other material support or resources to a proscribed organisation; or

(d) organises, facilitates, participates in any activity of, or directs a proscribed organisation,

commits an offence under this Act:

Provided that-

(i) mere expression of opinion, belief or sympathy or the peaceful exercise of rights to freedom of expression, association or assembly, without the provision of material support or active participation shall not constitute an offence; and

(ii) nothing in this subsection shall be construed as restricting an Attorney-at-Law from discharging his professional duties in accordance with law.

The proviso makes it clear that such persons who merely exercise their rights to express opinions exercising their freedom of expression, association or assembly cannot be held liable for prosecution under this Clause. The Proviso is very specific and straight forward in that regard.

We have already adverted to the above that the power conferred on the President is only to proscribe an organization which engages in any act amounting to an offence under this act. We also have already stated above the necessity and obligation on the part of the government to counter terrorism. Clause 6 would apply only to such organization which is proscribed by the President when he has reasons to believe that such organization has engaged in acts amounting to offences under this Act. This order

of prescription by the President can be challenged in the appropriate court. A party or organization aggrieved by such order of prescription can also apply to the President for reconsideration of such decision. Therefore, if any organization continues to be under such proscription, it stands to reason that any person should not be allowed to join or engage in activities of such proscribed organizations.

We observe that the application of Clause 6 of the Bill has been further narrowed down by the proviso, which has carved out the rights of the citizens such as their freedom of expression, association or assembly. Furthermore, the engagement in professional duties by Attorneys-at-Law has also been specifically carved out from the application of Clause 6 of the Bill.

Thus, we are unable to accept that Clause 6 of the Bill would render persons who engage in any protests, strikes, lockouts or other industrial actions as well as the persons who engage in the provision of humanitarian and medical activities by lawfully established humanitarian organisations liable for prosecution as such persons too could be taken as having committed an act of terrorism under this definition. We hold that Clause 6 of the Bill is not inconsistent with the provisions of the Constitution.

Clause 9

The Petitioners referring to Clause 9 raised the concern that any person who makes a publication against the Government would be caught up as a person who directly or indirectly has induced the public and thereby committed or attempted to commit or abetted or conspired to commit or as a person who has prepared to commit, the offence of terrorism. Clause 9 is reproduced below:

> (1) Any person who, with the intention of directly or indirectly inducing the public or any section of the public, to commit, attempt, abet, conspire to commit or prepare to commit, the offence of terrorism, publishes or causes to be published any statement, or speaks any word or words, or

makes any sign or visible representation, commits an offence under this Act.

(2) Any person who, with the knowledge of directly or indirectly inducing the public or any section of the public, to commit, attempt, abet, conspire to commit or prepare to commit, an offence of terrorism, publishes or causes to be published any statement, or speaks any word or words, or makes any sign or visible representation, commits an offence under this Act.

A closer look at the above provision shows clearly that the Petitioners' above argument is not factually or legally correct. This Clause has criminalized a publication made by persons who would induce the public or any section of the public, to commit, attempt, abet, conspire to commit, the offence of terrorism. The Clause will apply to those who would engage in such publication with the intention of directly or indirectly inducing the public. Furthermore, the inducement offered by such person has to be an inducement to commit the offence of terrorism. The offence of terrorism has been clearly defined in Clause 3.

On the other hand, if a person has induced the public to commit the offence of terrorism having such intention of directly or indirectly inducing the public to commit the offence of terrorism then why should any Government spare such person without subjecting such person to the criminal law of the country. Here the offences are not Penal Code offence but the offence of terrorism.

The petitioners sought to argue that Clause 9 is inconsistent with Article 3 read with Article 4(d), 4(e), 10 and 14 of the Constitution as this tends to prevent citizens from expressing their freedom of thought, freedom of expression, assembly and association against the government.

Article 15(2) of the Constitution has provided that "the exercise and operation of the fundamental rights declared and recognized by Article 14(1)(a) shall be subject to such restrictions as may be prescribed by law in the interest of … or in relation to… incitement to an offence."

We have already adverted to above, the fact that the definition of the offence of terrorism set out in Clause 3 of the Bill is not inconsistent with any provision of the Constitution. If that is so, no one can be allowed to commit, attempt, abet, conspire or prepare to commit the offence of terrorism. It is settled law that what cannot be done directly cannot also be done indirectly.

Thus, we do not see any merit in this argument advanced by the Petitioners. Therefore, we are not prepared to accept that Clause 9 is inconsistent with any provision of the Constitution.

Clause 10

Petitioners sought to argue that the offence of "disseminating terrorist publications" set out in Clause 10 would prevent citizens from exercising their fundamental rights guaranteed to them under Article 14 of the Constitution. Clause 10 is as follows:

(1) Any person who, with the intention or knowledge of directly or indirectly inducing the public, a section of the public, or any person to commit, attempt, abet, conspire to commit, or prepare to commit, the offence of terrorism-

(a) distributes or circulates a terrorist publication;

(b) gives, sells or lends a terrorist publication;

(c) offers for sale a terrorist publication;

(d) provides a service to others that enables them to obtain, read, listen to or look at a terrorist publication or to acquire it;

(e) transmits the contents of a terrorist publication; or

(f) keeps a terrorist publication in his possession,

commits an offence under this Act.

(2) For the purposes of subsection (1), a "terrorist publication" means a publication which is-

(a) a direct or indirect inducement to commit, attempt, abet, conspire to commit or prepare to commit the offence of terrorism; or

(b) useful in the commission of, or attempt, abetment, conspiracy to commit or preparation to commit, the offence of terrorism.

(3) Nothing in this section shall apply to the collection, possession, access, or dissemination of any publication in good faith and for a lawful purpose, including journalism, academic or scientific research, education, artistic expression, legal proceedings, or the dissemination of information in the public interest.

Again the argument advanced by the Petitioners in relation to this Clause is also that it would be possible for the Executive to prosecute even a journalist who collects material and publishes something with regard to some activities committed by a terrorist group. However, we observe that the clear answer to this concern is in Clause 10(3) which specifically has taken away the application of this Clause to persons such as journalists who in good faith and for any lawful purpose disseminate such information in the public interest. We further observe that journalism is specifically included in Clause 10(3).

Furthermore, Clause 11 has specifically excluded list of items mentioned therein from the application of Clauses 9 and 10.

We have already adverted to above that the definition of terrorism in Clause 3 is not vague and therefore is consistent with the provisions of the Constitution. We have also

adverted to above that no person must be allowed to do something indirectly which such person is not allowed to do directly. We are of the view that the Constitution has never contemplated to guarantee any right to a citizen to engage in terrorist activities.

Furthermore, Clause 10(3) of the Bill has proceeded to protect the rights of any citizen who exercises such right in good faith. This is specifically provided for in the carving out section which is Clause 10(3) of the Bill.

Clause 15

Some of the Petitioners made submissions challenging this Clause as well. We will first re-produce this Clause which reads as follows:

> (1) Any person who
>
> (a) knowing or having reasons to believe that any other person-
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> (i) is making preparation, attempting, abetting or conspiring to commit an offence under this Act; or
>
> (ii) has committed an offence under this Act,
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> fails to provide such information, or provides false or misleading information to a police officer; or
>
> (b) having in his possession any information relating to the whereabouts of any person whom he knows has committed an offence of terrorism or an offence associated with terrorism, fails to provide such information or provides false or misleading information to a police officer,
>
> commits an offence under this Act and shall, on conviction by the High Court, be liable to imprisonment of either description for a term not exceeding seven years or to a fine not exceeding rupees seven million or to both such imprisonment and fine.

> (2) It shall be a defence for a person charged with an offence under subsection (1) to prove that he had a reasonable excuse for the failure to provide information as required under that subsection, and such "reasonable excuse" includes failure to provide-
>
> (1) legally protected information;
>
> (2) information covered by professional secrecy; and
>
> (3) information which amounts to self-incriminating evidence.

The section corresponding to Clause 15 in the PTA is Section 5. Offences under the said Section in the PTA are commonly known as Section 5 Offences or offences pertaining to 'failure to give information.' It was imperative for Courts to sentence Persons convicted under Section 5 of the PTA to a jail sentence for a period not exceeding seven years. There were no defences set out for such offence under PTA. Thus, such persons necessarily became liable for that offence if the ingredients set out therein were fulfilled.

We however observe that Clause 15 of the Bill has given the discretion for Courts even to punish such offender only with a fine. This has opened a new avenue as regards the sentence to be imposed on the accused person. Thus, when Court thinks it should only impose a fine on such accused person in a given circumstances of a case, it can do so after this Clause becomes law.

Moreover, there is also a most striking feature in Clause 15. That is the fact that it has specifically set out the possible defences that a person who faces such prosecution could take up. This is salutary. We have no doubt that these defences have been set out in Clause 15 of the Bill to safeguard persons who would have a reasonable excuse for not divulging such information to Police.

Furthermore, some of the petitioners contended that Clause 15 would operate against Attorneys-at-Law as it would prevent them from discharging their duties when they

receive instructions from persons suspected to have been concerned or have committed the offence of terrorism. It was their submission that in such circumstances an Attorney-at-Law would be under an obligation in terms of this Clause to provide the information they receive by way of instruction from their clients, to Police.

This submission has been made because the petitioners who advanced this argument have read Clause 15(1) disjunctively and independent of Clause 15(2) of the Bill. We are of the view that Clause 15 must be read conjunctively with Clauses 15(1) and 15(2). One will get the correct interpretation only when the above Clauses read together.

Further, we observe that Section 126(1) of the Evidence Ordinance has provided as follows:

> No Attorney-at-Law, or notary shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such Attorney-at-law, or notary by or on behalf of his client, or to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course of and for the purpose of such employment:
>
> Provided that nothing in this section shall protect from disclosure-
>
> (a) Any such communication made in furtherance of any illegal purpose;
>
> (b) Any fact observed by any Attorney-at-Law, or notary in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment.

In view of the above, we are unable to accept the submission that Clause 15 is inconsistent with the provisions of the Constitution.

Clauses 20 and 24

The Petitioners sought to argue that conferring the powers to arrest on the member of the armed forces or a coast guard officers is violative of the relevant provisions in the Constitution.

Clause 20(1) reads as follows:

> (1) Where there is a reasonable suspicion of the commission of an offence under this Act, a police officer, a member of the armed forces or a coast guard officer (in this Part referred to as the "arresting officer") may, subject to the provisions of subsection (1) of section 24-
>
> (a) stop and search any suspect, vehicle, vessel, train, unmanned vehicle, or aircraft;
>
> (b) question such suspect;
>
> (c) enter and search any premises or land;
>
> (d) and take into custody any document, thing or article, used, derived out of, connected with or concerned in committing or reasonably suspected of being used, derived out of, connected with, or concerned in committing an offence under this Act.

This Court in Joseph Perera Alias Bruten Perera v. The Attorney General,[25] held as follows:

> "Just as the Chief Justice has stated that over-breadth in the restriction of the freedom of speech and expression has a peculiar evil, the evil of creating chilling effects which deter the exercise of that freedom, any restriction on the powers of the Police in this area of action will also have a peculiar evil, the evil of creating a chilling effect which will inhibit law-enforcement officers from the due performance of their duties which ensure the protection and safety of the citizens

[25] [1992] 1 Sri LR 199.

and their property. No police officer can predict the final outcome of a case or how a legal provision would be interpreted by the court. If they are placed in peril and heavy damages awarded in respect of their acts where prosecution were to fail, no police officer would be inclined to perform his functions and may henceforth decide to leave well alone not only doubtful cases but practically all cases, thereby bringing the administration of justice to a standstill. In my view such a construction of the powers of arrest was furthest from the minds of the legislators."

We also observe that this power given to the member of the armed forces or a coast guard officers is a power that such officers can only use in exceptional circumstances. This is clear when one looks at Clause 24 of the Bill which is reproduced below:

Clause 24:

(1) A member of the armed forces or a coast guard officer may exercise the powers of search and arrest in exceptional circumstances where-

(a) a police officer is not present at the location, and it is not reasonably practicable to secure the immediate presence of a police officer;

(b) the situation requires immediate action to prevent an imminent terrorist act; or

(c) the armed forces are deployed in an area for the purpose of maintaining public order or conducting counter-terrorism operations under lawful authority.

(2) A member of the armed forces or a coast guard officer who makes an arrest under this Act shall, forthwith and in any event within a period not exceeding twenty-four hours, hand over the suspect so arrested to the officer-in-charge of the nearest police station or a police officer

designated, from time to time, in that behalf by the Inspector General of Police:

Provided that, where handing over the suspect so arrested to the officer in charge of the nearest police station is not practicable due to reasons beyond the control of the person who made the arrest, such suspect shall be handed over to the officer-in-charge of the next nearest police station.

(3) (a) A member of the armed forces who made the arrest shall, forthwith, notify the arrest to the relevant commanding officer or any other commissioned officer authorised in that behalf by the commanding officer.

(b) A coast guard officer who made the arrest shall, forthwith notify the arrest to the Director General of Coast Guard or any officer authorised in that behalf by the Director General of Coast Guard.

(4) The commanding officer or the Director General of Coast Guard or any officer authorised by the commanding officer or Director General of Coast Guard, as the case may be, shall forthwith inform of such arrest to the officer in charge of the police station to whom the suspect is to be handed over or a police officer designated by the Inspector General of Police in that behalf.

(5) At the time of handing over the suspect so arrested to the officer-in-charge of the police station as provided for in this section, the member of the armed forces or the coast guard officer who made the arrest shall make a statement to such officer-in-charge of the police station, setting out the circumstances relating to such arrest.

The Petitioners have claimed that the instant provisions are violative of Articles 12, 13 and 4(c) read with 3 of the Constitution. However, we observe that the extension of the

24 hour time limitation was considered by this Court in the Anti-Terrorism Bill.[26] In the said Determination, this Court justified the extension on the basis of Article 15(7) of the Constitution.[27] (vide 46).

This is reasonable and proportionate in view of the threat to national security posed by terrorism, as there is a need to balance the powers of investigative authorities in the interest of national security, while ensuring the rights of the suspects are safeguarded.

We also further observe that provisions in Clause 26(1)(b) would apply where the power of arrest is exercised in the exceptional circumstances by the member of the armed forces or a coast guard officers.

Thus, we are of the view that the extension of the time period as above, is consistent with Article 15(7) of the Constitution and is not violative of any of the rights under Article 13 of the Constitution.

Power given to members of the armed forces or to coast guard officers under clause 24(1) is a power which could be used only in exceptional circumstances. There is no doubt that armed forces particularly Sri Lankan Navy and officers of Coast Guard engaged in their duties to protect the country by patrolling in territorial sea of the country. The vessels in which they sail do not carry Policemen. The question arises, as to what action they could take if they come across a suspected terrorist in the sea. There is no doubt that they have to apprehend such suspected person while engaging in their duties at mid sea. Then, is it reasonable to hold that they should spare such person whom they have reason to believe to be a person who has engaged in committing the offence of terrorism, merely because there is no policemen present in their vessel. This would be the necessary result in a situation where the power to arrest is given only to the members of Sri Lanka police.

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[26] supra.

[27] Page 46.

We have already adverted to above, local and international obligation of the government to protect the country from terrorism. Therefore, it does not stand to reason to exclude this power from the members of armed forces and coast guard officers.

In Anti-terrorism Bill this Court held as follows:

> "It is not unusual to find powers conferred on persons other than the police. Section 35 of the Code of Criminal Procedure Act empowers even private citizens to effect arrest in cognizable offences and produce such arrested persons to the nearest peace officer or police officer. In similar circumstances, the conferment of police powers of arrest on members of the armed forces or coast guards is not unfettered and carries with it the requirement to produce at the nearest police station as far as practicable. The language contained in clauses 19, 20 and 21 are mirrored in the Code of Criminal Procedure Act and as such is not inconsistent with any provision of the Constitution."

Furthermore, we also observe that Clause 24 has provided safeguards which are found in Clauses 24(2), 24(3), 24(4), 24(5), 26(1)(b) and 26(2).

However, we are of the view that the provision in Clause 26(2) must be further improved in view of Clause 41(2) which has removed the application of Sections 115 and 116 of the Code of Criminal Procedure Act in relation to a suspect under the PST Bill. This is because the Petitioners sought to argue that the said removal of the said application of Sections 115 and 116 would lead to deprivation of the suspects, rights to make any suitable application to the Magistrate.

In view of the above we are of the view that the phrase "on the application of such police officer" be inserted immediately after the phrase "the Magistrate may" which is found in the body of Clause 26(2).

With the above insertion, Clause 26(2) must read as follows:

> (2) Upon the production of a suspect before a Magistrate under subsection (1), where the police officer conducting the investigation has reasonable grounds to believe that further extended custody of the suspect is necessary for the purpose of conducting further investigation, the Magistrate may, **on the application of such police officer,** for reasons to be recorded in writing, authorise such suspect to be held in police custody for a further period not exceeding twenty-four hours.

With the above insertion we are of the view that any vagueness found in Clause 26(2) can be cured ensuring the judicial oversight.

In our view these are sufficient safeguards which would prevent any possible abuse of this power by the members of the armed force and coast guard officer. We hold that the conferring this power on them by Clause 24(1) is not inconsistent with the provisions of the Constitution.

Clauses 27 and 28

Petitioners sought to argue that issuing Detention Orders by the Executive would amount to taking away the Judicial Power of the people and hence would be inconsistent with the provisions of the Constitution.

However, we observe that by virtue of Section 9 of the PTA, the Minister has been empowered to issue a Detention Order for a period not exceeding 03 months in the first instance and thereafter extend it for an aggregate period not exceeding 12 months. We also observe that it is this period of 12 months that Clause 27 of the PST Bill proposes to bring down to 02 months. When the Executive intends to detain a person for a period longer than 02 months, then it can only do so with an order from the High Court

to that effect. This is clearly a step taken to reduce the rigour of the PTA. As held in the Counter Terrorism Bill Determination,[28] we observe that if the existing law is consistent with the Constitution, relaxation of that law cannot violate the Constitution. Moreover, as opposed to the possibility of 12 month detention period by the Executive, Clause 27 of the PST Bill has brought the detention of a person after the 02 month initial period of Executive Detention, under the Judicial Power of the people.

Furthermore, even the Anti terrorism Bill had the provision to issue detention orders by the Executive. When this provision was challenged, this Court in its Determination accepted the constitutionality of detention orders and stated as follows:[29]

> "Though the right to liberty (freedom of movement) is guaranteed by the Constitution it can be curtailed in terms of Article 15(7) of the Constitution in the interest of national security and public order. The right could be subordinated to the exigencies of investigation where there are a reasonable (objective) grounds for suspicion."

We also observe that the power to issue detention orders is subject to safeguards. Further, the power to issue a detention order under Clause 27 is stringently regulated and subject to judicial oversight. The application for a detention order must be made in writing to the Secretary of the Ministry of Defence, by the IGP or any officer not below the rank of DIG authorised by the IGP (vide Clause 27(1)). The circumstances in which it could be issued are explicitly provided for in Clause 27(4). Detention orders can thus only be issued for one or more of the following purposes:

(a) to facilitate the conduct of the investigation in respect of the suspect

(b) to obtain material for an investigation and potential evidence relating to the commission of an offence under this Act; or

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[28] Supra.

[29] Pages 54-55 of SC SD 01, 07, 10,12,13,18-38/2024.

(c) to question the suspect in detention.

Further, in terms of Clause 27(2), the Secretary must be satisfied that reasonable grounds exist to believe that the suspect has to be detained for the above purposes and is bound to record reasons. Such reasons must be stated in the detention order itself (Clause 27(4)).

The detention order is then placed before the Magistrate for inspection in terms of Clause 27(5), when the suspect is produced before the Magistrate under Clause 26. Under Clause 27(6), a copy of every detention order must be served on the suspect being detained within 48 hrs, and an acknowledgment by the suspect shall be obtained and filed in the Magistrate's Court. Under Clause 27(7), a copy of the detention order shall also be served on the next of kin of the suspect within 48 hrs.

Moreover, during detention, the following safeguards ensure that the suspect is not subject to torture or cruel, inhuman or degrading treatment or punishment:

(i) Under Clause 28(7) a suspect detained under a detention order shall be produced before a Magistrate at least once in every fourteen days.

(ii) Under clause 31(1), where the Magistrate has at any time reasonable suspicion to believe that the suspect may have been subjected to torture or cruel, inhuman or degrading treatment or punishment, the Magistrate shall (a) direct the suspect for medical treatment (b) direct that the suspect be produced before a JMO and (c) make an order to change the place of detention.

(iii) Under Clause 31(2) if the report of the JMO reveals a probability of torture or cruel, inhuman or degrading treatment or punishment, the Magistrate can make an order to change the place of detention. Where such order is made clause 31(3) provides that any police officer who previously had access to the suspect shall not have access.

(iv) Under Clause 31(4) the investigation of such suspect shall be continued by other police officers as directed by the IGP.

(v) Under Clause 31(5) the Magistrate is empowered to direct the IGP to commence an investigation into the alleged torture to enable the Attorney General to institute criminal proceedings against the person who committed torture.

(vi) Under clause 33(1) the Magistrate within whose jurisdiction an approved place of detention is located shall without giving advance notice visit the approved place of detention once a month and interview suspects and look into their well-being; and call for and inspect detention registers, detention orders and other documents.

(vii) Under Clause 33(2), the Magistrate before whom a suspect was first produced is also entitled to visit an approved place of detention.

(viii) Under Clause 33(4) if the Magistrate observes that the suspect has been subject to torture or cruel, inhuman or degrading treatment or punishment or the suspect alleges the same, the Magistrate can order for the suspect to be produced for examination by a JMO. Under Clause 33(5) if the Magistrate is satisfied there are reasonable grounds to believe the suspect has been subject to torture or cruel, inhuman or degrading treatment or punishment, the Magistrate can act in terms of clause 31.

(ix) Under Clause 34(1) the suspect must be treated humanely, which includes that the suspect shall under necessary supervision, be accessible to the next of kin and to his Attorney-at-Law. Under Clause 34(2) the Magistrate or the HRCSL can report noncompliance with (1) to the IGP.

(x) Under Clause 36 authorised officers of the HRCSL are empowered to visit detention centres and perform certain functions.

Additionally, the initial detention order is subject to review by the Independent Review Committee under Clause 30 of the Bill. Any person aggrieved by a detention order can

make an application to the Committee to review the order (vide Clause 30(4), and the Committee is required to review the necessity, legality and proportionality of such order and make its determination within thirty days of the reference (vide Clause 30(5)).

Clause 28(2) requires the High Court to record submissions made both supporting and objecting to the extension. Under Clause 28(4), the High Court after considering the submissions may either give effect to the detention order or refuse to give effect to the extended detention order, and thereafter upon inquiry remand or release the suspect on bail.

Clauses 29(1) and 37

The Petitioners sought to argue that the jurisdiction to grant bail must be with the Magistrate's Court and not with the High Court.

This Court in its Determination with regard to re the Foreign Exchange Bill,[30] held as follows:

> "The Policy making power is left to the authorities in whom it is vested by law. This Court has been reluctant to intervene in matters of policy unless such policy is found to be manifestly unreasonable."

Further, this Court in the Nation Building Tax (Amendment) Bill,[31] adopted the observation of Warrington LJ. in Short v. Poole Corporation that "with the question whether a particular policy is wise or foolish the Court is not concerned; it can only interfere if to pursue it is beyond the powers of the authority."

The Policy of the Government is to vest the power to grant bail in High Court and not in the Magistrate's Courts. We also agree with that policy as learned Judges of the High

[30] SC SD 1-4/2017.

[31] SC SD 34/2016.

Court are more matured than the learned judges sitting in Magistrates' Courts. There is nothing wrong in this policy. We do not see that this policy is in any way inconsistent with the provisions of the Constitution.

Further, the presence of exceptional circumstances is only necessary when the suspect is concerned in committing or having committed an offence punishable with life imprisonment. This is understandable. Even the Bail Act has a similar provision.

Moreover, this Court in its Determination regarding the Prohibition of Ragging and other Forms of Violence in Educational Institutions Bill held as follows:

> "This determination does not lay down a rule that bail must always be decided by the Magistrate before whom an arrested person is first produced. Parliament may determine which court is to exercise jurisdiction over bail and may prescribe conditions subject to which bail may be granted."[32]

Judges of the High Court are judges exercising the appellate power over the judgments and orders pronounced by the Magistrates. Thus, it is the Judges of the High Court who are expected by law to correct any errors of facts and law committed by the Magistrates. However, both the Magistrates and the Judges of the High Court are exercising the judicial power of the people. Therefore, the issue as to what Court must be conferred with the jurisdiction to grant bail in a given category of cases would be a matter of policy. We need not interfere with the government's policy making power unless such policy is found to be manifestly unreasonable.

Clause 41(2)

The Petitioners sought to argue that taking away the effect of Sections 115 and 116 of the Code of Criminal Procedure Act has amounted to taking away the judicial supervision of the investigation. This is not so.

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[32] SC SD 6 and 7/1998 at page 61-62.

Clause 41(2) must be viewed with Clause 41(2) should be viewed in the context of the other provisions in the Bill. The exclusion of the application of Sections 115 and 116 of the Code of Criminal Procedure Act cannot be considered as authorizing police officers to dispense with the requirement of producing an arrested suspect before a Magistrate as the Bill has brought in a new provision to the same effect in Clause 28(7). The said Clause reads as follows:

> "A suspect detained pursuant to a Detention Order issued under this Act shall, subject to the provisions of the Code of Criminal Procedure Act, be produced before a Magistrate at least once in every fourteen days."

We have already adverted to the above about the effect of the exclusion of the applications of Sections 115 and 116 of the Code of Criminal Procedure Act when we discussed under the heading "Clauses 20 and 24."

We have already decided that the improvement we suggested to Clause 26(2) must be effected. We made that decision in the backdrop of the concerns of the Petitioners raised in respect of the removal of the aforesaid application (removal of application of Sections 115 and 116 of the Code of Criminal Procedure Act). Therefore, once a suspect is produced before a Magistrate, the Magistrate has a discretion to decide whether he should grant the application made by the police officer under Clause 26(2) of the Bill.

We also observe that the requirement to report facts fortnightly to the Magistrate during the continuation of the investigation which is found in Section 120 of the Code of Criminal Procedure Act still applies. Therefore, we are unable to accept the arguments of the petitioners that a person produced before a Magistrate as a suspect under the provisions of this Bill would not have any recourse with regard to his rights because of the removal of the effect of Sections 115 and 116 of the Code of Criminal Procedure Act.

Thus, it is wrong to state that the government has brought Clause 41(2) to permit and justify further detention or arrest of a suspect or concealing facts from the Courts to deprive people of their judicial power.

Moreover, we observe that since there is a requirement to forward the suspect to the Magistrate within 24 hours. Further, as per Section 116 of the Code of Criminal Procedure Act, we observe that there is a requirement in terms of Section 115(2) to either detain the suspect in custody, pending further investigation by warrant addressed to the superintendent of any prison or to discharge the suspect after 15 days if the proceedings are not instituted against him.

We have considered the provisions in Sections 115 and 116 of the Code of Criminal Procedure Act. We observe that these provisions cannot practically co-exist with the provisions in the PST Bill with regard to the procedure with regard to the investigations set out in the PST Bill. Earlier in this Bill we have already adverted to the necessity and the obligation of the government to protect the state from terrorism. Therefore, in those circumstances we are of the view that the removal of the application of Sections 115 and 116 of the Code of Criminal Procedure Act is something which cannot be avoided.

We further observe that the principle adopted in the Bill is to allow the continuous application of the application of the provisions of the Code of Code of Criminal Procedure Act which are not inconsistent with the provisions of the instant Bill. This principle is specifically mentioned in Clause 41(1) of the Bill.

Clauses 47 and 51

Petitioners have stated that conferring power on a police officer to make a direction under Clause 47 is an abdication of the judicial power of the people.

Firstly Clause 47 has conferred that power on the Magistrate and not on a police officer. It is only a police officer not below the rank of a Deputy Inspector General of Police who can give directions in a situation of urgency and in the interest of national security. This is also subject to the necessary subsequent approval of such direction by a Magistrate within twenty-four hours from the issuance of such direction. Thus we observe that judicial oversight is present even when a police officer not below the rank of a Deputy Inspector General of Police exercises such powers.

The power conferred on a police officer under Clause 51 is merely a power to make an application to a Magistrate for a directive in order to protect persons from harm or further harm associated with an offence under PST Bill. This power does not extend to any other offence under any other law. The Magistrate will issue such directive only when he is satisfied that such danger exists. We observe that it is only in a situation of urgent circumstances that this power can be exercised by police. In such situations only an officer in charge of a police station can issue such directives. This is also subject to the necessary subsequent approval of such direction by the Magistrate within twenty-four hours from the issuance of such direction. Therefore, as in the case of Clause 47, when an officer in charge of a police station exercises the powers under the proviso to Clause 51(2), the judicial oversight is present.

Clauses 52 and 53

It was the submission of the Petitioners that Clauses 52 and 53 have given an undue power to the Attorney General. They sought to a argue that it would be open for the Attorney General to use this power to blackmail a suspect arrested in connection with an offence under this Bill by compelling such suspect to abandon his political ideology or activities against the government by giving him assurance that he would not be prosecuted. Having gone through the above provisions carefully, we observe that this submission is factually incorrect. This is because these provisions do not give such power to the Attorney General to decide on his own to exercise either to differ or suspend the prosecution without consulting and obtaining the consent of such suspect.

We also observe that even the consent of such suspect is not enough. The whole exercise must be sanctioned by the High Court. Therefore any deferment or suspension of the prosecutions against such suspect can happen only with tripartite agreement i.e., the Attorney General, the suspect, the High Court. Thus, this is indeed a power given to Court rather than to the Attorney General for without the sanction of High Court the Attorney General can take no such step.

The following phrase: where-

(a) death or grievous hurt has not been caused to any person; or

(b) the security of the State or the people of Sri Lanka has not been seriously compromised or affected,

shows clearly that the Attorney General can only use this provision in respect of persons who have been concerned with such offences with a lesser degree of culpability rather than those who have really got involved in committing acts of serous nature.

Moreover, we are of the view that this step is salutary as it gives an opportunity for a wrong doer to volunteer to reform himself without undergoing any prosecution or any punishment that may ensue subsequent to such prosecution. Therefore, we are unable to agree with the above submission of the Petitioners.

Clause 54

With regard to this Clause, it is the submission of the Petitioners that Clause 54 has sought to take away the judicial power of the people, and therefore is inconsistent with the Svasti and Articles 3, 4, 11, 12(1), 13, 14, 28 and 83 of the Constitution.

Clause 54 only allows the Secretary to the Ministry of Defence in the circumstances specified in the Clause to make an order detaining a person till the conclusion of the trial in the interest of national security or public order or where there is a threat or an

apprehension of serious harm to the life of the accused. However, We observe that the sanction of the High Court is required to give effect to such detention order. It is open for the High Court to subject such sanction to directions it may give to ensure fair trial. Restrictions of this nature are legitimate under Article 15(7) of the Constitution in the interest of national security and public order. The judicial oversight is also maintained in these circumstances.

Clauses 56, 57 and 58

The Petitioners have challenged the effect of these Clauses on the basis that they confer power on police to obtain statements from suspects with undue influence or under duress. However, we observe that a similar provision exists even in the Code of Criminal Procedure Act. i.e., Section 127. Furthermore, the Clause has mandated taking of all the possible safeguards against any abuse of this power by police.

Clause 59

We have already set out above some aspects of Clause 59 under the heading Proscribed Organizations. Nevertheless, we propose to mention here the following facts also. The Petitioners contended that the power conferred on the President to make Proscription Orders could be used to subjugate those opposing the government. The Petitioners submitted that such persons could include a political party/organization/trade union which legitimately opposes the government. It is on that basis that the Petitioners sought to argue that Clause 59 is inconsistent with the provisions of the Constitution.

However, this Clause has only empowered the President to issue a Proscription Order only when he has reasonable grounds to believe that any organisation is engaged in any act amounting to an offence under this Bill. We have already adverted to above that the Bill has defined the offences without vagueness. Therefore, we are unable to accept the argument that the President has an 'unfettered discretion' which would enable him to issue a Proscription Orders against those opposing the government.

Although the Petitioners also sought to argue that no time period has been stipulated for the validity of the proscription order, we observe that it is open for a person or organisation aggrieved by such proscription order to seek reconsideration or cancellation of such order under Clause 59(5).

Although the judicial review is possible by the Court of Appeal the Petitioners raised the concern that the provisions in Article 35 would not permit such review by the Court of Appeal. In the course of the submissions the learned Additional Solicitor General informed us that it is possible to amend Clause 59(5)(b) to confer that jurisdiction on the Supreme Court. If Clause 59(5)(b) is amended at the Committee Stage by substituting the phrase "Court of Appeal" with the "Supreme Court" then the judicial oversight becomes effective. In those circumstances, we hold with such amendment that Clause 59 would not be inconsistent with the provisions of the Constitution.

Clause 60

This Clause empowers the Magistrate to impose restriction orders. This is through the exercise of judicial power. Police can only apply for such orders. That is also when the requirements enumerated in the clause are fulfilled and the application has to be made by an officer not below the rank of a Deputy Inspector General of Police. Furthermore, the Magistrate also has to be guided by the requirements mentioned in the Clause.

Although Clause 60(7) has provided specifically for revision or judicial review of such restriction order imposed by the Magistrate we are of the view that Clause 60(7) is superfluous as it would any way be possible for an aggrieved person to apply for the next appropriate Court exercising appellate powers over the orders of a Magistrate. We are of the view that the removal of Clause 60(7) would make the provision regarding the judicial oversight by higher Court unambiguous. Once that is done Clause 60 would not be inconsistent with the Constitution.

Clause 61

This Clause empowers the Secretary to make order restricting access to a place which he has reasons to believe is used, or is likely to be used, for the commission or preparation for the commission of an offence under this Bill. We observe that there are safeguards in place against the abuse of such power by the Secretary as he can only restrict the access to such place to the extent it is proportionate for the purpose of preventing such offence and that when less restrictive measures are not effective. The Secretary's order would be for a period not exceeding seventy-two hours.

Clause 61(3) states:

> (3) Any extension beyond the period of seventy-two hours shall be made only upon application to a Magistrate, who shall grant such extension only if satisfied that such extension is necessary and proportionate.

Therefore, we are satisfied that judicial oversight is in place at such situation also.

Clause 66

Clause 66 is reproduced below:

> (1) A directive, direction or Order issued or made under this Act may be questioned in proceedings under Article 126, 140 or 141 of the Constitution.
>
> (2) Subject to the provisions of subsection (1), no suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing done in good faith in pursuance of any directive, direction or Order issued or made under this Act.

The argument of the Petitioners was that the word 'order' in Clause 66(1) is vague.
We suggest that Clause 66(1) be re-framed as follows:

(1) An executive Order, directive or direction issued or made under this Act may be questioned in proceedings under Article 126, 140 or 141 of the Constitution.

The learned Additional Solicitor General agreed to effect that amendment at the Committee Stage. With such amendment Clause 66 would be free of any vagueness and hence would be consistent with the Constitution.

Conclusion

For the foregoing reasons, we determine that the Clauses in Bill (L. D. O. No. 37/2026) titled "Protection of the State from Terrorism" can be passed by simple majority of Parliament after making the following amendments (Three of them already undertaken by the learned Additional Solicitor General) at the Committee Stage:

(i) Clause 26(2) to be amended at the committee stage by inserting the phrase "on the application of such police officer", with the above insertion, Clause 26(2) must read as follows:

> Upon the production of a suspect before a Magistrate under subsection (1), where the police officer conducting the investigation has reasonable grounds to believe that further extended custody of the suspect is necessary for the purpose of conducting further investigation, the Magistrate may, **on the application of such police officer,** for reasons to be recorded in writing, authorise such suspect to be held in police custody for a further period not exceeding twenty-four hours.

(ii) Clause 59(5)(b) to be amended at the Committee Stage by substituting the phrase "Court of Appeal" with the "Supreme Court" to make the judicial oversight effective.

(iii) Removal of the Clause 60(7) from the Bill on the. Basis that it is superfluous; and

(iv) Clause 66(1) to be re-framed as follows:

(1) An executive Order, directive or direction issued or made under this Act may be questioned in proceedings under Article 126, 140 or 141 of the Constitution.

We place on record, our appreciation of the assistance given by the learned President's Counsel and learned Counsel who appeared for the Petitioners and also the learned Additional Solicitor General who represented the Hon. Attorney-General.

P. PADMAN SURASENA
CHIEF JUSTICE

ACHALA WENGAPPULI
JUDGE OF THE SUPREME COURT

SAMPATH B. ABAYAKOON
JUDGE OF THE SUPREME COURT