

Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979

An Act to Make Temporary Provision for the Prevention of Acts of Terrorism in Sri Lanka, the Prevention of Unlawful Activities of Any Individual, Group of Individuals, Association, Organisation or Body of Persons Within Sri Lanka or Outside Sri Lanka and for Matters Connected Therewith or Incidental Thereto.

WHEREAS the Parliament of the Democratic Socialist Republic of Sri Lanka continues to affirm that men and institutions remain free only when freedom is founded upon respect for the Rule of Law and that grievances should be redressed by constitutional methods:

AND WHEREAS public order in Sri Lanka continues to be endangered by elements or groups of persons or associations that advocate the use of force or the commission of crime as a means of, or as an aid in, accomplishing governmental change within Sri Lanka, and who have resorted to acts of murder and threats of murder of members of Parliament and of local authorities, police officers, and witnesses to such acts and other law abiding and innocent citizens, as well as the commission of other acts of terrorism such as armed robbery, damage to State property and other acts involving actual or threatened coercion, intimidation and violence:

AND WHEREAS other democratic countries have enacted special legislation to deal with acts of terrorism:

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, and shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may appoint by Order published in the Gazette.

PART I

OFFENCES

2. (1) Any person who -

(a) causes the death of any specified person, or kidnaps or abducts a specified person, or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or

(b) causes the death of any person who is a witness to any offence under this Act, or kidnaps or abducts or commits any other attack upon any such person, which act would, under the provisions of the Penal Code, be punishable with death or a term of imprisonment of not less than seven years; or

(c) commits criminal intimidation of any special person or a witness referred to in paragraph (b); or

(d) commits the offence of robbery of the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society; or

(e) commits the offence of mischief to the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society or to any other public property; or

(f) without lawful authority imports, manufactures or collects any firearms, offensive weapons, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or

(g) possesses without lawful authority, within any security area, any firearms or any offensive weapon, ammunition or explosives or any article or thing used, or intended to be used, in the manufacture of explosives; or

(h) by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commission of acts of violence or religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups; or

(i) without lawful authority erases, mutilates, defaces or otherwise interferes with any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place; or

(j) harbours, conceals or in any other manner prevents, hinders or interferes with the apprehension of, a proclaimed person or any other person, knowing or having reason to believe that such person has committed an offence under this Act,

shall be guilty of an offence under this Act.

(2) Any person guilty of an offence specified in -

(i) paragraph (a) or (b) of subsection (1) shall on conviction be liable to imprisonment for life, and

(ii) paragraphs (c), (d), (e), (f), (g), (h), (i) or (j) of subsection (1) shall on conviction be liable to imprisonment of either description for a period not less than five years but not exceeding twenty years.

(3) In this section -

(i) "proclaimed person" means any person proclaimed by the Inspector-General of Police by Proclamation published in the Gazette to be a person wanted in connection with the commission of any offence under this Act; and

(ii) "security area" means any area declared by the Minister by Order published in the Gazette to be a security area if he is satisfied that by reason of any unlawful activity there is in such area a reasonable apprehension of organised violence.

3. Any person who -

(a) does any act preparatory to the commission of an offence; or

(b) abets, conspires, attempts, exhorts or incites the commission of an offence; or

(c) causes the death of any person, or commits any attack upon any person whomsoever in the course of committing any offence under this Act, which act would, under the provisions of the Penal Code, be punishable with death or with a term of imprisonment of not less than seven years,

shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period of not less than five years but not exceeding twenty years where the offence is one specified in paragraph (a) or (b), or to imprisonment for life where the offence is one specified in paragraph (c).

4. Where any person is convicted by any court of any offence under section 2 or section 3, then, in addition to any other penalty that the court shall impose for such offence -

(a) all property movable and immovable, of that person shall, by virtue of such conviction, be deemed to be forfeited to the Republic; and

(b) any alienation or other disposal of such property effected by such person after the date of coming into operation of this Part shall be deemed to have been, and to be, null and void.

5. Any person who -

(a) knowing or having reasonable cause to believe that any person -

(i) has committed an offence under this Act, or

(ii) is making preparation or is attempting to commit an offence under this Act,

fails to report the same to a police officer; or

(b) having in his possession any information relating to the movements or whereabouts of any person who has committed or is making preparations or is attempting to commit an offence under this Act fails to report the same to a police officer,

shall be guilty of an offence and shall, on conviction be liable to imprisonment of either description for period not exceeding seven years.

PART II

INVESTIGATION OF OFFENCES

6.(1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorised in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding anything in any other law to the contrary -

(a) arrest any person;

(b) enter and search any premises;

(c) stop and search any individual or any vehicle, vessel, train or aircraft; and

(d) seize any document or thing,

connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.

(2) Any person who obstructs or hinders any police officer lawfully exercising any power conferred on him by or under subsection (1), shall be guilty of an offence and shall on conviction be liable to imprisonment of either description or a period not exceeding seven years.

7.(1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person:

Provided that, where the Attorney-General consents to the release of such person before custody before the conclusion of the trial, the Magistrate shall release such person from custody.

(2) Where any person connected with or concerned in or reasonably suspected to be connected with or concerned in the commission of any offence under this Act appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial:

Provided that, if an application is made under the hand of a police officer not below the rank of Superintendent to keep such person in police custody for a period not exceeding seventy-two hours, the Magistrate shall authorise such custody and thereupon the order of remand made by the Magistrate shall remain suspended for the period during which such person is in police custody.

(3) A police officer conducting an investigation under this Act in respect of any person arrested under subsection (1) of section 6 or remanded under subsection (1) or subsection (2) of this section -

(a) shall have the right of access to such person and the right to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation; and

(b) may obtain a specimen of the handwriting of such person and do all such acts as may reasonably be necessary for fingerprinting or otherwise identifying such person.

8. Any police officer may at any stage of an investigation or trial produce before any Magistrate any person conversant with any fact relating to the commission of any offence under this Act, and the Magistrate shall thereupon record the statement of such person upon oath.

PART III

DETENTION AND RESTRICTION ORDERS

9.(1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, the Minister may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister, and any such order may be extended from time to time for a period not exceeding three months at a time:

Provided, however, that the aggregate period of such detention shall not exceed a period of eighteen months.

(2) (a) At any time after an order has been made in respect of any person under subsection (1), the Minister may direct that the operation of such order be suspended and may make an order under subsection (1) of section 11.

(b) The Minister may revoke any such direction if he is satisfied that the person in respect of whom the direction was made has failed to observe any condition imposed or that the operation of the order can no longer remain suspended without detriment to public safety.

10. An order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

11.(1) Where the Minister has reason to believe or suspect that any person is connected with or concerned in the commission of any unlawful activity referred to in subsection (1) of section 9, he may make an order in writing imposing on such person such prohibitions or restrictions as may be specified in such order in respect of -

(a) his movement outside such place of residence as may be specified; or

(b) the places of residence and of employment of such person; or

(c) his travel within or outside Sri Lanka; or

(d) his activities whether in relation to any organisation, association or body of persons of which such person is a member, or otherwise; or

(e) such person addressing public meetings or from holding office in, or taking part in the activities of or acting as adviser to, any organisation, association or body of persons, or from taking part in any political activities,

and he may require such person to notify his movements to such authority, in such manner and at such times as may be specified in the order.

(2) Where the Minister makes a restriction order in respect of any person while an order of detention in respect of such person is in force, such restriction order shall, unless otherwise specified, take effect upon the expiry of the detention order.

(3) Every order made under subsection (1) shall be in force for such period, not exceeding three months, as may be specified therein:

Provided, that the Minister may, by order in writing, extend such period from time to time for periods not exceeding three months at a time so however that the aggregate of such periods does not exceed eighteen months.

(4) Where an order is made under subsection (1), the Minister may by notice in writing served on the person to whom such order relates, vary, cancel or add to any prohibitions or restrictions imposed by such order on such person and the prohibitions or restrictions so varied or added to shall, unless earlier cancelled, continue in force for the unexpired portion of the period specified in such order or the period as extended under subsection (3).

(5) An order made by the Minister under subsection (1) shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise.

12. Any person who contravenes or acts in breach of any prohibition or restriction imposed on him by an order under section 11 shall be guilty of an offence and shall on conviction be liable to a term of imprisonment of either description for a period of five years.

PART IV

ADVISORY BOARD

13.(1) There shall, for the purposes of this Act, be established an Advisory Board consisting of not less than three persons appointed by the President.

(2) Any person in respect of whom any detention order or restriction order has been made shall be informed of the unlawful activity in connection with which such order has been made and such person or any other person on his behalf may make representations to the Advisory Board.

(3) Every meeting of the Advisory Board held to consider such representations shall be presided over by a Chairman nominated from among the members by the Minister and it shall be the duty of the Chairman to advise the Minister in respect of such representations.

(4) The Minister may make rules in relation to the hearing and disposal of any representations that may be made by any person in respect of any such order.

PART V

PROHIBITION OF PUBLICATIONS

14.(1) Notwithstanding any Order made under section 1, the provisions of subsection (2) shall come into operation only upon an Order made in that behalf by the Minister from time to time and published in the Gazette for such period as may be specified in the Order.

(2)(a) No person shall, without the approval in writing of a competent authority, print or publish in any newspaper any matter relating to -

(i) the commission of any act which constitute an offence under this Act or the investigation of any such offence; or

(ii) incitement to violence, or which is likely to cause religious, racial or communal disharmony or feeling of ill-will or hostility between different communities or racial or religious groups.

(b) No person shall, without the approval in writing of a competent authority, distribute or be concerned in the distribution of any newspaper printed or published in Sri Lanka or outside Sri Lanka in respect of any matter the printing and publication of which is prohibited under paragraph (a).

(3) Any person who commits any act in contravention of any of the provisions of subsection (2) shall be guilty of an offence and shall on conviction be liable to imprisonment of either description for a period not exceeding five years.

(4)(a) Where any person is convicted of an offence under this section, the court may, in addition to the punishment it may impose for that offence under subsection (3), order that no person shall print, publish or distribute or in any way be concerned in the printing, publication or distribution of any such newspaper for such period as is specified in such order and that the printing press in which such newspaper was printed shall, for such period as shall be specified in such order, not be used for any purpose whatsoever or for any such purpose as is specified in the order.

(b) Where any proceedings have been instituted against any person for the commission of any offence under this section, it shall be competent for the court to make an interim order that the printing press in which it is alleged that such newspaper or publication was printed shall not be used for any purpose whatsoever or for any such purpose as is specified in the order, until the conclusion of the trial.

15. (1) Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury or before a High Court at Bar by three Judges without a jury, as may be decided by the Chief Justice. The provisions of sections 450 and 451 of the Code of Criminal Procedure Act, No. 15 of 1979, shall, mutatis mutandis, apply to the trial of offences under this Act by the High Court at Bar and to appeals from judgements, sentences and orders pronounced at any such trial held by the High Court at Bar.

[The above sub-section was introduced by Amending Act 22 of 1988]

(2) Upon the indictment being received in the High Court against any person in respect of any offence under this Act or any offence to which the provisions of section 23 shall apply, the court shall, in every case, order the remand of such person until the conclusion of the trial.

15A. (1) Where any person is on remand under the provisions of sub-section (2) of section 15, or section 19(a), notwithstanding any other provision of this Act or any other law, the Secretary to the Ministry of the Minister in charge of the subject of Defence may, if he is of the opinion that it is necessary or expedient so to do, in the interests of national security or public order, make Order, subject to such directions as may be given by the High Court to ensure a fair trial

of such person, that such person be kept in the custody of any authority, in such place and subject to such conditions as may be determined by him having regard to such interests.

(2) Any Order made by the Minister under sub-section (1) shall be communicated to the High Court and to the Commissioner of Prisons and it shall be the duty of such Commissioner, to deliver the custody of such person to the authority specified in such order and the provisions of the Prisons Ordinance shall cease to apply in relation to the custody of such person.

[Note: Section 15A was inserted by Amending Act 10 of 1982 w.e.f. 24 July 1979]

PART VI

TRIAL

16.(1) Notwithstanding the provisions of any other law, where any person is charged with any offence under this Act, any statement made by such person at any time, whether -

- (a) it amounts to a confession or not;
- (b) made orally or reduced to writing;
- (c) such person was or was not in custody or presence of a police officer;
- (d) made in the course of an investigation or not;
- (e) it was or was not wholly or partly in answer to any question,

against such person if such statement is not irrelevant under section 24 of the Evidence Ordinance:

Provided, however, that no such statement shall be proved as against such person if such statement was made to a police officer below the rank of an Assistant Superintendent.

(2) The burden of proving that any statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant.

(3) Any statement admissible under subsection (1) may be proved as against any other person charged jointly with the person making the statement, if, and only if, such statement is

corroborated in material particulars by evidence other than the statements referred to in subsection (1).

17. Notwithstanding anything to the contrary in any other law, the provisions of sections 25, 26 and 30 of the Evidence Ordinance shall have no application in any proceedings under this Act.

18.(1) Notwithstanding anything to the contrary in any other law -

(a) a statement recorded by a Magistrate, or made at an identification parade by a person who is dead or who cannot be found, shall be admissible in evidence notwithstanding that such person is not present or cannot or has not been cross-examined; and

(b) any document found in the custody, control or possession of a person accused of any offence under this Act or of an agent or representative of such person may be produced in court as evidence against such person without the maker of such document being called as a witness and the contents of such document shall be evidence of the facts stated therein.

(2) If in the course of a trial for an offence under this Act, any witness shall, on any material point, contradict either expressly or by necessary implication a statement made by him and recorded by a Magistrate or a statement made by him at any identification parade, it shall be lawful for the presiding Judge-

(a) to act upon such statement; and

(b) to have such witness at the conclusion of such trial arraigned and tried on an indictment which shall be prepared and signed by the Registrar of such court, for intentionally giving false evidence in a stage of a judicial proceeding.

(3) At any trial referred to in subsection (2)(b), it shall be sufficient to prove that the witness made the contradictory statement and it shall not be necessary to prove which of the statements is false.

19. Notwithstanding the provisions of any other written law -

(a) every person convicted by any court of any offence under this Act shall, notwithstanding that he has lodged a petition of appeal against his conviction or the sentence imposed on him, be kept on remand until the determination of the appeal;

(b) any order made under the provisions of subsection (4) of section 14 shall, notwithstanding any appeal made against such order, continue in force until the determination of such appeal:

Provided, however, that the Court of Appeal may in exceptional circumstances release on bail any such person referred to in paragraph (a) subject to such conditions as the Court of Appeal may deem fit, or vary or suspend any order referred to in paragraph (b).

20. Notwithstanding anything in the Code of Criminal Procedure Act, No 15 of 1979 -

(a) the provisions of section 303 of that Act shall not apply in the case of any person who is convicted;

(b) the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty,

by or before any court of any offence under this Act.

21. Every court shall give priority to the trial of any person charged with, or indicted for, any offence under this Act and to the hearing of any appeal from the conviction of any such offence and sentence imposed on such conviction.

PART VII

SPECIAL PROVISIONS

22. Any person who has committed any offence under section 296 or section 297 or section 300 of the Penal Code prior to the date of coming into operation of Part VI of this Act or has abetted or has conspired to abet the commission of any such offence prior to such date, in relation to any person who is a specified person or a person who was a witness to any offence which if such offence had been committed after the date of coming into operation of Part I of this Act would have constituted an offence under this Act shall, notwithstanding the provisions of any other law to the contrary, be triable without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury.

23. The provision of sections 8, 16, 17 and 18 of this Act shall, mutatis mutandis, apply to and in relation to any act, or the trial for the commission of an offence in respect of any act, committed before the date of coming into operation of Parts I, II and VI of this Act, which act would, if committed after such date, have constituted an offence under this Act:

Provided, however, that no statement referred to in any such section shall be admissible unless such statement was made after the coming into operation of the aforesaid Parts of this Act.

24. Any person who commits an act in or in relation to any vessel or aircraft registered in Sri Lanka shall, if such act constitutes an offence under this Act, be guilty of an offence under this Act.

PART VIII

MISCELLANEOUS

25. Where an offence under this Act is committed by a body of persons, then if that body of persons is -

(a) a body corporate, every director and officer of that body corporate; or

(b) a firm, every partner of that firm; or

(c) a body unincorporate other than a firm, every officer of that body responsible for its management and control,

shall be deemed to be guilty of such offence:

Provided that no such person shall be deemed to be guilty of such offence if he proves that such offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

26. No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act.

27.(1) The Minister may make regulations under this Act for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for its approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette.

28. The provisions of this Act shall have effect notwithstanding anything contained in any other written law and accordingly in the event of any conflict or inconsistency between the provisions of this Act and such other written law, the provisions of this Act shall prevail.

[Section 29 was repealed by Amending Act 10 of 1982, w.e.f. 24 July 1979]

30. The Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organisations Law, No 16 of 1978, is hereby repealed.

PART IX

INTERPRETATION

31.(1) In this Act, unless the context otherwise requires -

"competent authority" means any person appointed by the Minister by name or by office to be a competent authority for the purposes of this Act;

"co-operative union or co-operative society" includes any society registered or deemed to be registered under the Co-operative Societies Law, No 5 of 1972;

"document" has the same meaning as in the Penal Code;

"explosives" has the same meaning as in the Explosives Act;

"firearms" has the same meaning as in the Firearms Ordinance;

"local authority" means any Municipal Council, Urban Council, Town Council or Village Council and includes any Authority created and established by or under any law to exercise, perform and discharge powers, duties and functions corresponding to or similar to the powers, duties and functions exercised, performed and discharged by any such Council;

"newspaper" includes any journal, magazine, pamphlet or other publication;

"offensive weapon" has the same meaning as in the Offensive Weapons Act, No 18 of 1966;

"organisation" includes any movement, society, party, association or body or group of persons;

"printing press" includes any machinery, apparatus or plant capable of being used for printing, lithography, photography or other mode of representing or reproducing words in a visible form, or any type or other article belonging to such machinery, apparatus or plant;

"public corporation" means any corporation, board or other body which was or is established by or under any written law other than the Companies Ordinance, with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

"specified person" means -

(a) the President;

(b) a Judge of the Supreme Court, Court of Appeal, High Court, District Court, Magistrate's Court, Primary Court or any other Court of First Instance;

(c) any representative or official of a foreign State or any official or other agent of an international organisation of an inter-governmental character;

(d) a member of Parliament or of a local authority;

(e) any member of a commission established under the Special Presidential Commissions of Inquiry Law, No 7 of 1978, or under the Commissions of Inquiry Act;

(f) juror, counsel or officer of court; and

(g) any member of the Armed Forces, Police Force and any other Forces charged with the maintenance of public order.

"unlawful activity" means any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act in the commission or in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act.

[This definition was inserted by Amending Act 10 of 1982, w.e.f. 24 July 1979]

(2) All words and expressions used herein and defined in the Penal Code and not hereinbefore defined shall be deemed to have the meanings respectively attributed to them by that Code.