

COMMENTARY COMPARING THE PROPOSED ANTI TERRORISM BILL TO THE PREVENTION OF TERRORISM ACT

Centre for Policy Alternatives
October 2023



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Timeline of key legislative steps relating to the Prevention of Terrorism Act (PTA)

1979	The PTA is passed as an emergency measure, with the intention of being a temporary provision in effect for three years from the date of commencement.
1982	Section 29 of the PTA which made it a temporary provision in place for three years was repealed, resulting in the PTA being a permanent piece of legislation.
1988	Minor amendments made to the PTA.
2018	Government in place (Yahapalana Government – headed by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe) publish the proposed Counter Terrorism Act (CTA). The Bill is challenged before the Supreme Court which decided that some provisions required a referendum. The Bill is never passed.
2022	An Amendment to the PTA is passed by the Government. The Amendment makes some notable improvements to the PTA, but significant problems with the draconian law remain in force.
22 nd March 2023	The Government publishes a version of the proposed Anti-Terrorism Act. The Bill is similar to the 2018 proposed CTA but in some ways is more draconian than the former draft law. The Bill is met with widespread criticism, after which it is withdrawn.
2 nd May 2023	Ministry of Justice calls for the submission of proposals on the proposed ATA. Several including the Centre for Policy Alternatives submit proposals for amendment.
15 th September 2023	A revised version of the proposed Anti-Terrorism Act (Proposed ATA) is published. The new version only contains a few changes from the previous March 2023 version of the Bill, and does not address many of the concerns which had been raised with regard to the former version of the proposed ATA.

Introduction to this Commentary

The Government of Sri Lanka published the revised 'Anti-Terrorism Bill' (hereinafter the proposed ATA) in the Gazette, on the 15th of September 2023. This Bill seeks to abolish the Prevention of Terrorism Act (PTA) which for nearly four and a half decades has been one of the most vicious tools of suppression and persecution used by the State. There have been calls to abolish the PTA since its inception in 1979 but the draconian law has survived through several Governments.

The publication of the presently Gazetted version of the proposed ATA follows a former version of the ATA, which was published on the 22nd of March 2023, containing a few differences. The proposed ATA is also in substance fairly similar to a Bill published during the Yahapalana regime in 2018, the Counter-Terrorism Bill (CTA) which also sought to replace the PTA. In this commentary, there is some reference to the CTA and the previous version of the proposed ATA published in March to comment on changes seen in the present Bill. However, the primary aim of this commentary is to compare the latest version of the proposed ATA in relation to the PTA.

In initial comments issued on the 27th of March 2023, the Centre for Policy Alternatives (CPA) noted concerns regarding the initially proposed ATA though acknowledging that the Bill does address some of the key concerns that persisted with the PTA over its several decades in operation. With the recent version of the proposed ATA being published in September 2023, CPA continues to reiterate these concerns. To put these recurring concerns in context, it must be borne in mind that the Sri Lankan State has demonstrated a pattern of abusing counter-terror laws, emergency laws and regulation-making powers in the past. Thus, any new law must be formulated with additional safeguards to prevent abuse.

At the outset, CPA notes that the proposed ATA lacks sufficient checks, and if operational, would provide ample space for abuse. Further, over-broad definitions of offences leave room for these laws to be used for means beyond the purported purposes of the Act, targeting minorities, civil society, the media and any dissenters in general. Further, this law has also taken away some of the improvements that were sought to be made by way of the CTA in 2018, such as the shortening of the duration of detention orders.

Overall, it must be remembered that for law reform to be successful, there has to be the administrative will for the law to succeed, and to be used for the correct purpose. The timing of this new law, rushed through with little to no meaningful stakeholder consultation suggests that this law reform is not being brought in the interest of addressing a decades-long problem that has plagued the country, but as a matter of political expediency. While CPA would welcome any reform in a positive direction, this law does not signify much optimism with deep implications for human rights, governance and democracy.

PROVISION	PREVENTION OF TERRORISM ACT (PTA)	ANTI-TERRORISM BILL (PROPOSED ATA)	COMMENTS
<p>Long title of the Act</p>	<p>• <i>for the prevention of acts of terrorism Sri Lanka, the prevention of unlawful activities of any individual/ group of individuals/ association/ organization or body of persons within Sri Lanka or outside Sri Lanka and for matters connected therewith or incidental thereto.</i>”</p>	<ul style="list-style-type: none"> • <i>To make provision for the protection of the National Security of Sri Lanka and the people of Sri Lanka from acts of Terrorism; other offences associated with Terrorism and certain specified Acts constituting the offence of Terrorism committed within or outside Sri Lanka;</i> • <i>for the prevention of the use of Sri Lankan territory and its people for the preparation for Terrorism outside Sri Lanka;</i> • <i>to provide for the detection, identification, apprehension, arrest, detention, investigation, prosecution and punishment of any person who has committed an act of Terrorism or any other offence associated with Terrorism;</i> • <i>for the repeal of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979; and for matters connected therewith or incidental thereto.</i> 	<p>The PTA was originally intended to be only a temporary provision, which was changed when Section 29 of the PTA was repealed by Amendment Act No. 10 of 1982.</p> <p>The proposed ATA is a more permanent measure. And the long title of the ATA is much more detailed than the PTA as to what it seeks to do, and descriptive of who it will apply to and where it will apply.</p> <p>It is noteworthy that the proposed ATA makes a reference to protecting ‘national security’ as a purpose of the ATA.</p> <p>Unlike the PTA which sought to prevent acts of terrorism, and other unlawful activities in broad terms, the ATA adds additional elements: ‘other offences associated with Terrorism’, and ‘certain specified Acts constituting the offence of Terrorism’.</p>
<p>Preamble</p>	<p>affirm that men and institutions remain free only when freedom is founded upon respect for the Rule</p>	<p>Whereas terrorism has seriously threatened the sovereignty and territorial integrity of Sri</p>	<p>Despite the legacy of past abuses, the Preamble of the ATA makes no mention of, nor acknowledges how the PTA</p>

	<p>of Law and that grievances should be redressed by constitutional methods.</p> <p>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.</p>	<p>Lanka, and has caused deaths and serious injury to the citizens of Sri Lanka, and has caused vast damage to public and private property of Sri Lanka, and has retarded national development;</p> <p>terrorism in its various forms and manifestations is a major threat to the peace and security of the community of nations; and, it is a foremost duty of the Government to protect Sri Lanka, its people, and property from acts of terrorism and related acts;</p> <p>Sri Lanka is under obligation to enact laws to give domestic legal effect to international instruments relating to countering of any acts of terrorism and related acts to which Sri Lanka has become a signatory;</p> <p>the Government of Sri Lanka is committed to protect other sovereign nations and their people from the scourge of acts of terrorism;</p> <p>Sri Lanka is committed and desirous of eradicating and preventing domestic and international terrorism through enforcing an effective system for the administration of criminal justice against terrorism, based on international norms and standards and domestic needs;</p> <p>the Government of Sri Lanka considers the safeguarding of national security is of paramount importance for the purpose of securing due recognition and respect of the rights and freedom of the people of Sri Lanka</p>	<p>adversely affected the lives of Sri Lankan citizens, and the necessity for its abolishment.</p> <p>The ATA preamble mentions Sri Lanka's international obligations for countering terrorism, but does not in a similar vein emphasise that Sri Lanka is also required by its international obligations to strike a balance between the need to combat terrorism and the need to ensure personal liberties and rights.</p> <p>The preamble pays lip service to the rights and freedoms of the people of Sri Lanka by merely mentioning it in passing, but the emphasis continues to be on national security (which is given paramount importance), territorial integrity, and sovereignty. The Preamble goes so far as to suggest that what is crucial is national security and only through ensuring that, can the rights and freedoms of the people be recognized.</p> <p>PTA also failed to address this balance between rights and freedoms, and national security and order. It merely provided that grievances should be redressed by Constitutional methods.</p> <p>In addition, in the preamble, the PTA seems to speak more about specific examples of terrorist activities it seeks to</p>
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		<p>and for the protection of territorial integrity and enhancing the sovereignty of the people of Sri Lanka;</p> <p>the Government of Sri Lanka is mindful of the need to ensure just and fair application of the system for the administration of criminal justice against terrorism.</p>	<p>combat, while the ATA speaks about terrorism in broader and abstract terms.</p>
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PART I – APPLICATION OF THE ACT

<p>To whom does the Act apply?</p>	<p>Section 24 – Act committed in relation to any vessel or aircraft 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.</p>	<p>Clause 2 – Application of the Act</p> <p>(1) The provisions of this Act shall apply to any person who commits an offence under this Act, whether within or outside the Territorial limits of Sri Lanka, including-</p> <ul style="list-style-type: none"> (a) any citizen of Sri Lanka, who commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka; (b) any person who commits an offence under this Act – <ul style="list-style-type: none"> (i) wholly or partly, in Sri Lanka; (ii) in or over the territorial waters of Sri Lanka; (iii) in the airspace of Sri Lanka; (iv) on-board or in respect of an aircraft or vessel registered in Sri Lanka or belonging to or used by the Government of Sri Lanka; (v) on-board or in respect of an aircraft or vessel within the territory of Sri Lanka including the territorial waters and airspace of Sri Lanka; (vi) wholly or partly within the office premises of a diplomatic or consular mission of Sri Lanka or in respect of such premises, or a consular officer of Sri Lanka, or at the residence of the Head of such diplomatic or consular mission or at the residence of any diplomatic or consular officer or any other employee of such mission; (vii) wholly or partly within the office premises situated outside Sri Lanka of a statutory board of the Government of Sri Lanka or in 	<p>The proposed ATA covers a much broader category of people than the PTA. The ATA stipulates that it applies to “any person who commits an offence under this Act, whether within or outside the Territorial limits of Sri Lanka” at the outset.</p> <p>The ATA covers offences committed against Sri Lankan citizens or government property, offences committed by former citizens of Sri Lanka (subject to certain conditions) and offences by those who have their habitual residence in Sri Lanka.</p> <p>It even covers offences committed on-board or in respect of any aircraft/vessel “within the territory of Sri Lanka” in Clause 2(1)(b)(v). It does not limit to aircrafts/vessels that are registered in/belonging to/used by the Sri Lankan government.</p> <p>The PTA Section 2 which specifies the offences under the Act states it applies to ‘any person’ who commits them. Section 24 however includes acts committed in or in relation to any vessel or aircraft registered in Sri Lanka within the ambit of the Act.</p>
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		<p>respect of the such premises, or within the residence of an employee of such statutory board;</p> <p>(c) any person, who commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka in respect of-</p> <p>(i) a citizen of Sri Lanka including a citizen deployed in an international peace-keeping or monitoring mission;</p> <p>(ii) a property owned by the State;</p> <p>(d) any person who had been a citizen of Sri Lanka, and commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka:</p> <p>Provided however, provisions of this Act shall be enforced in respect of such person, only if he continues to have his habitual residence in Sri Lanka:</p> <p>Provided further, that if he does not have his habitual residence in Sri Lanka, provisions of this Act, may be enforced with the concurrence of the foreign State of which he is a citizen; and</p> <p>(e) any person who has his habitual residence in Sri Lanka, commits an offence under this Act, within or outside the territory of the Republic of Sri Lanka.</p>	
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PART II – OFFENCES AND PENALTIES

<p>What acts fall within the offence of terrorism?</p>	<p>Section 2(1) – Offences under this Act and Penalties</p> <p>(1) Any person who</p> <p>(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</p> <p>(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</p> <p>(c) commits criminal intimidation of any specified person or a witness referred to in paragraph (b); or 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</p>	<p>Clause 3 – Offence of terrorism</p> <p>(1) Any person, who commits any act or illegal omission specified in subsection (2), with the intention of–</p> <p>(a) Intimidating the public or a section of the public;</p> <p>(b) wrongfully or unlawfully compelling the Government of Sri Lanka, or any other Government, or an international organization, to do or to abstain from doing any act;</p> <p>(c) Propagating war or, violating territorial integrity or infringement of sovereignty of Sri Lanka or any other sovereign country; or</p> <p>(2) An act or an illegal omission referred to in subsection (1) shall be-</p> <p>(a) murder;</p> <p>(b) hurt;</p> <p>(c) hostage taking;</p> <p>(d) abduction or kidnapping;</p> <p>(e) causing serious damage to any place of public use, a State or governmental facility, any public or private transportation system or any infrastructure facility or environment;</p> <p>(f) committing the offence of robbery, extortion or theft, in respect of State or private property;</p> <p>(g) causing serious risk to the health and safety of the public or a section thereof;</p>	<p>Two acts that fell within the scope of Clause 3(1) in the version of the proposed ATA published in March have been omitted from this version – they are;</p> <p><i>“unlawfully preventing any such government from functioning”</i> and <i>“propagating war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, commits the offence of terrorism”.</i></p> <p>The phrase ‘propagating war’ has been added to Clause 3(1)(c).</p> <p>Two acts which fell within the scope of Clause 3(2) have also been removed. They are;</p> <p><i>“causing serious obstruction or damage to or interference with essential services or supplies or with any critical infrastructure or logistic facility associated with any essential service or supply”</i> and <i>“being a member of an unlawful assembly for the commission of any act or illegal omission set out in paragraphs (a) to (k)”</i></p>
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	<p>(d) commits the offence of mischief to the property of the Government, any department, statutory board, public corporation, bank, cooperative union or co-operative society or to any other public property ; or</p> <p>(e) 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</p> <p>(f) 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</p> <p>(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</p> <p>(i) without lawful authority erases, mutilates, defaces or otherwise interferes with any words, inscriptions, or lettering</p>	<p>(h) causing serious obstruction or damage to, or interference with, any electronic or automated or computerized system or network or cyber environment of domains assigned to, or websites registered with such domains assigned to Sri Lanka;</p> <p>(i) causing the destruction of, or serious damage to, religious or cultural property;</p> <p>(j) causing serious obstruction or damage to, or interference with any electronic analog, digital or other wire-linked or wireless transmission system including signal transmission and any other frequency-based transmission system;</p> <p>(k) without lawful authority, importing, exporting, manufacturing, collecting, obtaining, supplying, trafficking, possessing or using firearms, offensive weapons, ammunition, explosives, or any article or thing used or intended to be used in the manufacture of explosives, or combustible or corrosive substances or any biological, chemical, electric, electronic or nuclear weapon, other nuclear explosive device, nuclear material or radioactive substance or radiation emitting device, or</p> <p>(l) committing an act which constitutes an offence within the scope of the Convention on the Suppression of Terrorist Financing Act, No.25 of 2005.</p> <p>(3) For the purpose of subsection (2), “place of public use” includes any highway and any other premises or place to which at the material time the public have or</p>	<p>Clause 3(2)(1) and 3(3) have been newly added.</p> <p>The proposed ATA includes far broader acts under the offence of terrorism than the PTA, even including omissions as seen in Sub-Clause (2) of Clause 3. It appears that this list is vague and could be interpreted broadly. This broad definition grants the executive wide leeway in deciding who can be accused of terrorism and therefore subjected to arrest, detention and other restrictions under the ATA.</p> <p>International standards recommend that the definition of terrorism in anti-terror legislation meets a threshold of three separate conditions:</p> <ol style="list-style-type: none"> 1) involving an identified “trigger offence” found in 10 of the international anti-terrorism conventions in force, and 2) be perpetrated with the intention to cause death, serious bodily injury, or taking hostages, and 3) be for the purpose of invoking a state of terror, intimidating a population, or compelling a
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	<p>appearing on any board or other fixture on, upon or adjacent to, any highway, street, road or any other public place; or</p> <p>(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.</p>	<p>are permitted to have access, whether as of right or otherwise.</p>	<p>government or international organization.</p> <p>ATA's definition of terrorism fails to meet international standards and dramatically lowers the threshold for what acts can be classified as terrorism by including many which are already covered under normal criminal law (. i.e. property damage, unlawful assembly, robbery, theft, damage to religious or cultural property) and some which are even protected by rights under the constitution (i.e. freedom of assembly, freedom of expression and freedom of movement).</p> <p>Sub-Clause (e) of Clause 3(1) is an offence already encapsulated in the ICCPR Act which had been abused to curtail the freedom of expression of persons such as Ahnaj Jazeem, Shakthika Sathkumara, etc. The ATA has elevated it to an offence of terrorism.</p> <p>Furthermore, as elaborated further in the following comments, the ATA definition of acts of terrorism is further expanded by creating new offences. Publications that "directly or indirectly" encourage members of the public to acts of terrorism (Clause 11), give or receive instruction or training</p>
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			in terrorism (Clause 12), and wilfully fail or neglect to comply with a direction issued under the Act (Clause 16) are also made terrorism-related offences.
What are the penalties for the offence of terrorism/attempted terrorism?	<p>Section 2(2) – Offences under this Act and Penalties</p> <p>(2) Any person guilty of an offence specified in;</p> <p>(i) paragraph (a) or (b) of subsection (1) shall on conviction be liable to imprisonment for life, and</p> <p>(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.</p> <p>Section 4 – Forfeiture of Property</p> <p>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;</p> <p>(a) all property movable and immovable, of that person shall, by virtue of such conviction, be</p>	<p>Clause 4 – Penalty for the Offence of Terrorism</p> <p>(1) Any person who-</p> <p>(a) commits the offence specified in paragraph (a) of subsection (2) of section 3 with the intention to cause death, and causes the death of any other person in the course of committing such offence, shall, upon conviction by the High Court be punished with imprisonment for life;</p> <p>(b) commits an offence under subsection (2) of section 3 other than the offence referred to in paragraph (a), shall upon conviction by the High Court be liable to rigorous imprisonment for a term not exceeding twenty years and to a fine not exceeding rupees one million.</p> <p>(2) Where any person is convicted by any court of any offence under section 3 or 5,-</p> <p>(a) the court may, by virtue of that conviction, in addition to any penalty that the court shall impose for such offence, forfeit to the Republic all property both movable and immovable of that person; and</p>	<p>The minimum sentence for offences provided under Section 2(2)(ii) of the PTA is not imposed in the ATA. This will allow judicial discretion in sentencing, subject to the sentencing guidelines.</p> <p>Clause 4(1)(a) under the previous version of the proposed ATA provided for a sentence of death, but the present proposal limits it to life imprisonment, which is one of the improvements in the present draft.</p> <p>The penalty for attempting, abetting or conspiring to commit an offence of terrorism or anything preparatory to it, is a new addition. It is open to broad interpretation and abuse.</p>

	<p>deemed to be forfeited to the Republic; and (b) any alienation or other disposal of such property effected by such person after the 24th day of July, 1979, shall be deemed to have been, and to be, null and void.</p>	<p>(b) any alienation or other disposal of property effected by such person after such conviction shall be deemed to have been, and to be, null and void.</p> <p>Clause 5 - Penalty for attempt to commit the offence of terrorism</p> <p>5. (1) Any person who attempts, abets or conspires to commit an offence under section 3, or does any act preparatory to the commission of an offence under section 3, shall upon conviction by the High Court, be liable to imprisonment of either description for a term not exceeding fifteen years and to a fine not exceeding rupees one million.</p> <p>(2) If such person has committed the offence of terrorism consequent to the commission of an offence under subsection (1), such person shall be liable to the same penalty imposed for the offence of terrorism as if he has committed the offence of terrorism.</p>	
<p>What are the offences associated with terrorism?</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 6 - Offence associated with Proscribed terrorist organizations and movements</p> <p>6. (1) Any person who-</p> <p>(a) joins, functions or serves as a leader, member of or a cadre of;</p> <p>(b) supports or directs, at any level, the activities of;</p> <p>(c) recruits, entices or encourages any person to be a member of or a cadre of, a proscribed terrorist organization or movements of which the objective is to commit the offence of terrorism under section 3, commits an offence under this Act.</p>	<p>Clause 6 read with several other Clauses (7-16) sets out additional offences associated with terrorism.</p> <p>This is a wide list of acts, and without a narrow interpretation, certain broad terms in this provision could have the effect of infringing on the rights and freedoms of people. Since terrorism offences are broadly defined in Clause 3 of the Bill, the references to 'proscribed terrorist organizations or movements of which the objective is to commit the offence of terrorism</p>

		(2) Any person who commits robbery, extortion, theft of property or otherwise obtains money or any property or other material, for or on behalf of a proscribed terrorist organization or a movement an objective of which is to commit the offence of terrorism under section 3, commits an offence under this Act.	under section 3’ could encapsulate a wide range of organisations and any person associated with them.
Specified Acts	No equivalent provision in the PTA.	<p>Clause 7 – Specified Acts</p> <p>7. Any person who-</p> <p>(a) commits an offence under Part III of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023, with regard to a victim of an offence under this Act or a witness to the commission of an offence under this Act; or</p> <p>(b) possesses an article for the purpose of commission, preparation, or instigation of the offence of terrorism referred to in section 3 of this Act, commits an offence under this Act.</p>	To be read with Clause 3. With a broad definition of terrorism to begin with, “any person who possesses an article for the purpose of commission, preparation, or instigation of the offence of terrorism,” is open for wide interpretation.
Aggravated Criminal Acts Associated with Terrorism	No equivalent provision in the PTA.	<p>Clause 8 - Aggravated Criminal Acts Associated with Terrorism</p> <p>8. Any person who harbours, conceals, or in any other manner, wrongfully or illegally prevents, hinders or interferes with the identification, arrest, custody or detention of a person knowing or having reasonable grounds to believe that such person has</p>	<p>To be read with Section 6 to 16.</p> <p>This includes an extensive list of offences, and unless carefully interpreted when reading it with Clause 3 and Clauses 6 to 16, it could lead to the use of this provision to</p>

		committed or is concerned in committing an offence under this Act commits an offence under this Act.	prosecute offences that are unrelated to terrorism.
Terrorism Associated Acts	No equivalent provision in the PTA.	<p>Clause 9 - Terrorism Associated Acts</p> <p>9. Any person who-</p> <p>(a) gathers any confidential information, having the intention of supplying such information to a person; or</p> <p>(b) supplies any confidential information to a person, knowing or having reasonable grounds to believe that such information will be used by such other person to commit or conspire, abet, attempt an offence under this Act:</p> <p>Provided however, nothing published in good faith with due diligence for the benefit of the public or in the national interest in printed and electronic media, or in any academic publication, shall be deemed to be an offence under this section.</p>	To be read with Clauses 6 to 16. Interpretation of the test of 'reasonable grounds' is questionable.
Acts Encouraging Terrorism	No equivalent provision in the PTA.	<p>Clause 10 – Encouragement of Terrorism</p> <p>10. (1) Any person-</p> <p>(a) who publishes or causes to be published a statement, or speaks any word or words, or makes signs or visible representations which is likely to be understood by some or all of the members of the public as a direct or indirect encouragement or inducement for them to commit, prepare or instigate the offence of terrorism; and</p>	A proviso which was not in the previous version of the ATA has been added to Clause 10(3) which defines the nature of statements coming under Clause 10(1), which could amount to the encouragement of terrorism. By this proviso opinion, legitimate criticism, satire, parody, caution or imputation made in good faith have been excluded from the definition.

		<p>(b) such person-</p> <ul style="list-style-type: none"> (i) intends directly or indirectly to encourage or induce the public to commit, prepare or instigate the offence of terrorism; or (ii) is reckless as to whether the public is directly or indirectly encouraged or induced by such statement to commit, prepare or instigate the offence of terrorism, commits an offence under this Act. <p>(2) The provisions of subsection (1) shall apply to any person who publishes or causes to be published a statement referred to in that subsection using–</p> <ul style="list-style-type: none"> (a) print media; (b) internet; (c) electronic media; or (d) other form of public notice. <p>(3) For the purposes of subsection (1), a “statement” includes every statement–</p> <ul style="list-style-type: none"> (a) which glorifies the commission of the offence of terrorism or preparation for the offence of terrorism; and (b) from which the public may reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances. <p>but does not include an opinion, legitimate criticism, satire, parody, caution or imputation made in good faith.</p>	<p>To be read with Clause 3 and Clauses 6 to 16. Within a scheme where terrorism is both vaguely and broadly defined, what amounts to encouragement of it, remains equally vague. Also, “directly or indirectly encourage members of the public to acts of terrorism” essentially remains vague.</p> <p>Though this Clause claims as its aim, the restriction of any publications encouraging terrorism, this list of offences includes acts that are vague and open to interpretation, and allow for potential abuse. It could lead to restrictions on/abuse of the freedom of expression of citizens. This Clause especially engenders abuse and exploitation against civil society activists and journalists.</p>
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		<p>(4) For the purposes of this section, the question as to how a statement is likely to be understood and what members of the public could reasonably be expected to infer from it shall be determined, having regard both-</p> <ul style="list-style-type: none"> (a) to the contents of the statement as a whole; and (b) to the circumstances and the manner of its publication. <p>(5) If any person proves to the satisfaction of the High Court that a statement referred to in subsection (2) neither expressed his views nor had his consent or approval for publication in all the circumstances of the publication of the statement, the court may order that such person is not guilty of an offence under this section.</p>	
Disseminating terrorist publications	No equivalent provision in the PTA.	<p>Clause 11- Disseminating Terrorist Publications</p> <p>11. (1) A person commits an offence under this section if such person-</p> <ul style="list-style-type: none"> (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 by means of a gift or sale; (e) transmits the contents of a terrorist publication electronically; or 	<p>To be read with Clause 3 and Clauses 6 to 16. Within a scheme where terrorism is both vaguely and broadly defined, what amounts to publications that “directly or indirectly encourage members of the public to acts of terrorism” essentially remains vague.</p> <p>The list of offences under this Clause are so expansive and open for interpretation. This provision yet again poses a serious threat to freedom of expression, and the work of media organisations and human rights activists.</p>

		<p>(f) keeps a terrorist publication in his possession with the intention of using it for a purpose referred to in paragraphs (a) and (b); and such person-</p> <p>(a) intends directly or indirectly to encourage or induce the public to commit, prepare or instigate the offence of terrorism; or</p> <p>(b) is reckless as to whether the public is directly or indirectly encouraged or induced by the statement to commit, prepare or instigate the offence of terrorism.</p> <p>(2) The provisions of subsection (1) shall apply to a person who commits any act referred to in paragraph (a) of that subsection using-</p> <p>(a) print media;</p> <p>(b) internet;</p> <p>(c) electronic media; or</p> <p>(d) other form of public notice.</p> <p>(3) For the purposes of subsection (1), a “terrorist publication” is a publication to be understood by some or all of the persons to whom it is or may be available-</p> <p>(a) as direct or indirect encouragement or other inducement to them to commit or, to prepare for, the offence of terrorism; or</p> <p>(b) that the matter contained therein is useful in the, commission of, or preparation for, the offence of terrorism.</p> <p>(4) For the purposes of subsection (3), a “matter” includes every matter-</p>	
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		<p>(a) which glorifies the commission of the offence of terrorism or preparation for the offence of terrorism; and</p> <p>(b) from which the public may reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances.</p> <p>(5) For the purposes of this section, the following shall be taken into consideration to consider whether a publication is a terrorist publication:-</p> <p>(a) to the content of the publication as a whole; and</p> <p>(b) to the circumstance in which a particular conduct in consequence to that publication has occurred.</p> <p>(6) No person shall be deemed to be guilty of an offence under this section, if that person proves to the satisfaction of the High Court that the matter contained in a publication alleged to have been a terrorist publication neither expressed his views nor had his consent or approval in all the circumstances of the publication of the same.</p> <p>(7) For the purposes of this section— “lend” includes let on hire; “publication” means an article or record of any description that contains any of the following:-</p> <p>(a) matter to be read;</p> <p>(b) matter to be listened; or</p> <p>(c) matter to be looked at or watched.</p>	
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<p>Training for Terrorism</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 12 - Training for Terrorism</p> <p>12. (1) A person, if such person-</p> <ul style="list-style-type: none"> (a) provides instruction or training, to commit or to prepare for the offence of terrorism or to assist the commission of, or to prepare for the offence of terrorism under section 3; and (b) knows, at the time he provides such instruction or training that the person receiving the instructions or training intends to use or is likely to use the skills in which he is being instructed or trained— <ul style="list-style-type: none"> (i) for or in connection with the commission or preparation for the offence of terrorism under this Act; or (ii) for assisting the commission or preparation for the offence of terrorism under this Act, commits an offence under this section. <p>(2) A person, if such person-</p> <ul style="list-style-type: none"> (a) receives instructions or training to commit or prepare for the offence of terrorism or to assist the commission of or to prepare for the offence of terrorism; and (b) intends, at the time of the instruction or training to use the skills which he is being instructed or trained— <ul style="list-style-type: none"> (i) for or in connection with the commission or preparation of the offence of terrorism; or (ii) for assisting the commission or preparation by others of the offence of terrorism, commits an offence under section 6. 	<p>The definition of acts of terrorism is further expanded by creating new offences, within a scheme where terrorism is broadly defined.</p>
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		<p>(3) For the purposes of this section “instruction or training” means instruction or training–</p> <p>(a) in the making or use of firearms, explosives or chemical, biological or nuclear weapons; or</p> <p>(b) in the use of, or for designing or adapting any method or technique for doing anything for the purpose of or in connection with the commission of the offence of terrorism.</p>	
<p>What is the offence of failure to provide information?</p>	<p>Section 5 – Penalty for Failure to Give Information</p> <p>Any person who;</p> <p>(a) knowing or having reasonable cause to believe that any person;</p> <p>(i) has committed an offence under this Act, or</p> <p>(ii) is making preparation or is attempting to commit an offence under this Act, fails to report the same to a police officer ; or</p> <p>(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,</p> <p>shall be guilty of an offence under this Act and upon conviction by</p>	<p>Clause 15 - Failure to provide information to be an offence</p> <p>15. Any person who-</p> <p>(a) knowing or having reasons to believe that any other person-</p> <p>(i) has committed an offence under this Act; or</p> <p>(ii) is making preparation, attempting, abetting or conspiring to commit an offence under this Act, fails to report to the officer in charge of the nearest police station; or</p> <p>(b) having in his possession any information relating to the whereabouts of any person of whom he knows that 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,</p> <p>commits an offence under this Act and shall upon conviction by the High Court and liable to imprisonment of either description for a term not exceeding seven years or to a fine not exceeding rupees five hundred thousand or to both such fine and imprisonment.</p>	<p>This Clause in the proposed ATA is very similar to the corresponding Section under the PTA.</p> <p>This offence has the potential to be abused - especially in the context of the corresponding provision (Section 5) of PTA being continuously abused to oppress the public - unless it is carefully interpreted so as to prevent violating the liberties of persons.</p>

	the High Court be liable to imprisonment of either description for a term not exceeding three years and to a fine not exceeding rupees five hundred thousand.		
Disobeying lawful orders to be an offence	No equivalent provision in the PTA.	<p>Clause 16 - Disobeying lawful orders to be an offence</p> <p>16. Any person who—</p> <p>(a) violates or acts in contravention of a lawful directive or order made in terms of this Act;</p> <p>(b) wilfully fails or neglects to comply with a direction issued in terms of this Act;</p> <p>(c) fails to provide information or provides false or misleading information in response to a question put to him by a police officer conducting an investigation under this Act: Provided however, such person shall not be compelled to make any statement under this paragraph self-incriminating such person;</p> <p>(d) willfully prevents or hinders the implementation of a lawful order or directive issued under this Act; or</p> <p>(e) prevents or obstructs enforcement of provisions of this Act, commits an offence, and shall upon conviction by the High Court be liable to imprisonment for a term not exceeding two years and to a fine not exceeding rupees five hundred thousand.</p>	<p>By Clause 16 of the proposed ATA, wilfully failing or neglecting to comply with a direction issued under the Act is defined as a (terrorism-related) offence.</p> <p>This Clause read together with Clause 61 effectively creates a host of new offences against persons not complying with any of the following directions of a Senior Superintendent of Police:</p> <ul style="list-style-type: none"> ● not to enter any specified area or premises; ● to leave a specified area or premises; ● not to leave a specified area or premises and to remain within such area or premises; ● not to travel on any road; ● not to transport anything or to provide transport to anybody; ● to suspend the operation of a specified public transport system;

			<ul style="list-style-type: none"> ● to remove a particular object, vehicle, vessel or aircraft from any location; ● to require that a vehicle, vessel, ship or aircraft to remain in its present position; ● not to sail a vessel or ship into a specified area until further notice is issued; ● not to fly an aircraft out of, or into a specified air space; ● not to congregate at any particular location; ● not to hold a particular meeting, rally or procession; ● and not to engage in any specified activity. <p>Failure to follow any such directive would constitute an offence under the ATA, even though these acts are themselves not offences nor need necessarily be related to terrorism.</p>
Offences to be cognizable	No corresponding Section in the PTA.	<p>Clause 17 - Offences to be cognizable</p> <p>17. Any offence under this Act shall be deemed to be a cognizable offence within the meaning of the Code of Criminal Procedure Act and shall be investigated, prosecuted and punished in terms of the provisions of this Act, the Code of Criminal Procedure Act and other written laws.</p>	Empowers the investigating officers to arrest and proceed with the prosecution without a warrant.

PART III – INVESTIGATION OF OFFENCES

<p>Who can conduct investigations?</p>	<p>PTA does not explicitly specify who is can conduct investigations under the Act. The wording of the Act indicates that investigations can be done by any police officer. (see section 7 and 8 of the PTA)</p>	<p>Clause 18 – who may conduct investigations An officer in charge of a police station or any other police officer authorized by an officer in charge of the police station, shall be entitled to commence and conduct investigation, of an offence under this Act or an act preparatory to the commission of an offence under this Act:</p> <p>Provided, however, where any person commits an offence under this Act in presence of a police officer, or person suspected of having committed an offence is arrested in the immediate aftermath of committing an offence, it shall be lawful for <u>any police</u> officer to arrest such a person to question and commence the investigation.</p> <p>Provided further, such police officer shall forthwith inform the officer in charge of the relevant police station, of the commencement of such investigation, and conduct the investigation subject to his instructions.</p>	<p>In contrast to the PTA, the proposed ATA specifies that the investigations under the Act can only be conducted by an officer in charge (OIC) of the police station or any other police officer authorised by an officer in charge of the police station. This is a significant improvement from the archaic PTA</p> <p>However, the proviso immediately after empowers <u>any</u> police officer to arrest a person in certain circumstances.</p> <p>Therefore, in order to maintain uniformity under the proposed ATA it is conducive that the investigations be conducted only by the OIC or a police officer authorised by the OIC.</p>
<p>Who can arrest?</p>	<p>Section 06 (1) (a) - (1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him in that behalf may, without a warrant and with or without assistance and notwithstanding</p>	<p>Clause 19-Arrest by a police officer and other officers Any police officer, member of the armed forces or a coast guard officer, may arrest without a warrant, any person-</p> <p>(a) who commits in his presence, or whom he has reasonable suspicion to believe, that such person has committed or there is an imminent possibility</p>	<p>The proposed ATA widens on the previous version of the ATA as it adds a situation in which the officers mentioned herein can make an arrest – when there is an ‘imminent possibility of a person committing an offence’. This widening of the power given to these officials may be subject to further abuse.</p>

	<p>anything in any other law to the contrary" (a) arrest any person</p>	<p>of committing by such person an offence under this Act; or (b) who has been concerned in committing an offence under this Act; or (c) in respect of whom such police officer, member of the armed forces or a coast guard officer receives information or a complaint which such officer or member believes to be reliable that a person has committed or concerned in committing an offence under this Act; or (d) who is fleeing from Sri Lanka with the intention of evading arrest or is evading arrest after committing an offence under this Act; or (e) who is violating the conditions of bail, subject to which such person has been released, being a suspect for the commission of an offence under this Act.</p>	<p>The proposed ATA provides far-reaching powers to the police, members of the armed forces and coast guards to arrest a person without a warrant.</p> <p>The proposed ATA also broadens the categories of persons that can arrest suspects in comparison to the PTA. The PTA permitted only Police officers of a certain rank to make arrests for offences committed under the Act.</p> <p>The inclusion of the military and the coast guard in the categories of persons that can carry out arrests is especially concerning considering that the situations they can carry out an arrest aren't limited to emergency situations where there is a concern a suspect may leave the country, but also when the officer has 'reasonable ground' to believe that a person has been concerned in the commission of an offence. There is no reason why in such a non-emergency situation the power of arrest cannot be exercised by the Police as the proper authority.</p>
<p>Procedure when arrest is carried out by an officer</p>	<p>Under the PTA only police officers were able to arrest suspects.</p>	<p>Clause 20 -Procedure when arrest is carried out by an officer other than a police officer (1) A person arrested by a member of the armed forces or a coast guard other than a police officer, shall be</p>	<p>In Sub-Clause (1), a person arrested must be handed over to the officer designated 'without unnecessary delay'. The vagueness of this term</p>

<p>other than a police officer</p>		<p>produced before the officer in charge of the nearest police station or of a police officer designated, from time to time, in that behalf by the Inspector General of Police, without unnecessary delay, and in any event within a period not exceeding twenty-four hours:</p> <p>Provided however, where such person has been arrested outside the territory of the Republic of Sri Lanka or on board of any aircraft or vessel, the period of time necessary for the journey from place of arrest to the relevant police station, shall be excluded in calculating such twenty-four hours' period:</p> <p>Provided further, if producing the person being arrested in terms of the preceding provisions of this subsection to the officer in charge of the nearest police station is not practicable due to reasons beyond the control of the person who carried out the arrest, the custody of such person shall be given to the officer in charge of any police station.</p> <p>(2) The officer who carried out the arrest shall as soon as practicable, notify the arrest to a commissioned officer, who has been authorized to receive such information.</p> <p>(3) Subject to the provisions of sections 24 and 25, a person so arrested may be questioned and further searched by the commissioned where it is necessary to protect the life of any person, to prevent any act of terrorism or to preserve evidence relating to an offence committed under this Act.</p> <p>(4) Such Commissioned officer shall forthwith inform of such arrest to the officer in charge of the nearest</p>	<p>may result in a situation where the armed forces or coast guard neglect to hand over the person arrested immediately, allowing the person to be in their custody for up to 24 hours. (see comments on Clause 21 where the phrase 'without unnecessary delay' has been replaced with 'forthwith').</p> <p>Considering the track record of Sri Lankan authorities, it is desirable that this language is tightened, to indicate that the arrested person must be handed to the relevant police officer immediately, so as to reduce the possibility of abuse.</p> <p>This is especially important in the context of the fact that as per the previous Clause, the instances these officers of the armed forces or coast guard can carry out an arrest aren't limited to instances of absolute necessity.</p> <p>Sub-Clause (3) referring to the additional power to question and further search a person, by the 'commissioned officer' too is unclear, especially if it is intended to be an exception to Clause 18, where a police officer requires the approval of the IGP to conduct an investigation.</p>
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		<p>police station or to a police officer designated by the Inspector General of Police in that behalf.</p> <p>(5) At the time of taking the person so arrested into the custody of the officer in charge of the police station as provided for in this section, the officer who carried out the arrest, shall make a statement to such officer in charge of the police station, setting out the circumstances relating to the arrest carried out by him.</p> <p>(6) Such officer shall also handover to such officer in charge of the police station, all items that may have been found in the possession of the suspect, or found from the place of arrest.</p>	
<p>Procedure when arrest is carried out by a police officer</p>		<p>Clause 21-Procedure when arrest is carried out by a police officer</p> <p>(1)</p> <p>(a) Any person arrested by a police officer, shall forthwith, be produced before the officer in charge of the police station to which such police officer is attached to.</p> <p>(b) Where such production is not practicable, the person arrested shall be produced before the officer in charge of the nearest police station.</p> <p>(2) It shall be lawful for a police officer to obtain the assistance of a member of the armed forces or a coast guard officer to carry out an arrest in terms of this Act, or to obtain such assistance to take the arrested person to a police station.</p>	<p>Under the previous CTA, the word forthwith in Sub-Clause (1)(a) of ATA reads as ‘without unnecessary delay’. While the replacement of that phrase with forthwith is an improvement, it raises the question as to why Clause 20 still contains the term ‘without unnecessary delay’. This suggests an intention on the part of the drafters to allow persons other than police officers more time when handing over an arrested person to the nearest police station than a police officer would have.</p> <p>Further, the similar Clause 19 in the previous CTA contained an additional Sub-Clause (3) which read ‘Every practicable measure shall be taken to protect an arrested person from any</p>

			physical harm.’. Questions must be raised as to why this Sub-Clause has been intentionally omitted in the proposed ATA.
Powers to search and seizure	<p>Section 6 -search and seizure</p> <p>(1) Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized 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"</p> <p>(a) arrest any person;</p> <p>(b) enter and search any premises;</p> <p>(c) stop and search any individual or any vehicle, vessel, train or aircraft; and</p> <p>(d) seize any document or thing, connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity.</p> <p>(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</p>	<p>Clause 22-Power to stop and search</p> <p>(1) Where there is reasonable suspicion of commission of an offence under this Act, a police officer, a member of the armed forces or a coast guard officer (hereinafter in this Part referred to as the “arresting officer”) may-</p> <p>(a) stop and search any person, vehicle, vessel, train or aircraft</p> <p>(b) question any person;</p> <p>(c) enter and search any premises or land; and</p> <p>(d) 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.</p> <p>(2) The provisions of section 26 shall mutatis mutandis apply in respect of the exercise of the powers relating to issuing of a notification to the relevant parties under this section.</p> <p>(3) Any such document, thing or article so taken into custody, shall as soon as practicable be produced before the officer in charge of the police station to which the relevant police officer is attached, or be produced before the officer in charge of the nearest police station.</p>	<p>While the PTA limited the powers of search and seizure only to police officers not below the rank of Superintendent or any other police officer, not below the rank of Sub-Inspector authorized in writing by him in that behalf, the proposed ATA empowers <i>any</i> police, member of the armed forced or coast guard officer to exercise these powers.</p> <p>Allowing such a wide category of persons to exercise such powers, without the requirement of authorization from a defined senior officer who can be held accountable can even lead to an abuse of power, or persons being victimized by personal vendettas an officer may have against them.</p> <p>This section is definitely one that requires more checks to be put in place. The list of things which can be taken into the custody of an officer, without a court order under Sub-Clause (1) (d) is very vague and wide and thus raises significant concerns.</p>

	<p>for a period not exceeding seven years.</p>	<p>(4) The officer in charge of the police station referred to in subsection (3) shall produce a report in that regard to the Magistrate before whom the relevant suspect is produced who shall make an appropriate order with regard to the possession or release of the documents, things or articles so taken into custody.</p>	<p>Furthermore, counter-terrorism measures, such as stopping of persons, should not arbitrarily or unlawfully interfere with the freedom of movement guaranteed under Article 14(h) of the Constitution. Thus, the implementation of these measures relating to the search and seizure should be professional and transparent and subject to oversight and judicial scrutiny.</p> <p>It is noteworthy that the language in the Proposed ATA from September 2023 is different to that of the provision in the Proposed ATA that was gazetted in March 2023. The previous version stipulates “reasonable grounds to arrest any person under section 20 or section 21” and the proposed ATA reads as “reasonable suspicion of commission of an offence under this Act”.</p>
<p>Information to be provided at the time of arrest</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 23- Information to be provided at the time of arrest (1)The arresting officer shall inform the person being arrested, (hereinafter in this part referred to as the (“suspect”) at the time of the arrest–</p> <ul style="list-style-type: none"> (a) the identity of the arresting officer; (b) the offence alleged to have been committed by the suspect; and 	<p>This is an improvement from the PTA. Furthermore, this Clause gives recognition to rights under Article 13(1) of the Constitution and Sri Lanka’s international obligation under Article 9(2) of the ICCPR.</p> <p>However, for this Clause to be implemented effectively it is important</p>

		<p>(c) the right of access of the person to an Attorney-at-Law as provided for in written law.</p> <p>(2) Every reasonable measure shall be taken to convey the information specified in subsection (1) in Sinhala, Tamil or English languages, whichever language understood by the suspect.</p> <p>(3) Where it is not practicable to convey the information to the suspect as specified in subsection (1) at the time of arrest, such information shall be conveyed in a language understood by him, as soon as practicable.</p>	<p>that officers recruited should be conversant in these languages thereby reducing the need to rely on provisions stipulated in Sub-Clause (3).</p> <p>Under ordinary law too, the language rights of arrested persons are recognized, but just because they are in the statute books, it does not mean that administratively they are respected. As such, the implementation of this section must be carefully monitored.</p> <p>Further, it should not be only the information provided in Sub-Clause (1) that a person should have access to in a language of their choosing, they should be given access to a translator or conversant officer to address any queries they may have.</p>
<p>Arrest to be carried out with due regard to privacy</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 24-Arrest to be carried out with due regard to privacy</p> <p>Every arrest shall be carried out, with due regard to the privacy of the suspect. Every possible measure shall be taken to ensure that the arrest of a female suspect is carried out by a female arresting officer, or in the presence of a female officer.</p>	<p>This provision is an improvement from the PTA. However, based on past record, it is realistic to expect that in the case of an arrest of a female, the standard expected for arrest by a female officer being ‘every possible measure being taken’ is bound to be abused.</p> <p>A deviation from the standard that a female shall only be arrested by a female should only be permitted in the</p>

			<p>case of an emergency, and if questioned, the onus should be on the police to demonstrate that it was an emergency.</p> <p>The previous version of the ATA referred to “Every arrest shall be carried out, with due regard to the privacy of the person being arrested.” It is noteworthy that there is a change in the vocabulary used in the new version, where the noun “person” is now replaced with “suspect”.</p>
<p>- Searching and questioning females</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 25- Searching and questioning females</p> <p>(1) Every possible measure shall be taken to ensure that the questioning of any female is carried out by a female arresting officer or in the presence of a female officer.</p> <p>(2) The search of a female, shall necessarily be conducted by a female officer.</p>	<p>The addition of this provision to the proposed ATA is a significant improvement from the PTA. However, so far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched.</p> <p>Searches, whenever necessary, must be conducted with the least intrusive means possible and fully conform to the prohibition of cruel, inhuman or degrading treatment.</p> <p>All requests made by law enforcement officials while conducting a personal or strip search must meet the standards</p>

			of necessity and proportionality under the specific circumstances.
Notification of the arrests	No equivalent provision in the PTA.	<p>Clause 26 – Notification of the arrest</p> <p>(1)Where any person is arrested under section 20 or 21 it shall be the duty of the arresting officer to issue to the spouse, father, mother, or any other close relative of such person, forthwith or in any case not later than twenty-four hours from the arrest, a notification by way of a document in such form as is specified in the First Schedule hereto, acknowledging the fact of such arrest. It shall be the duty of the holder of such document to return the same to, or produce the same before, the appropriate authority when such arrested person is released from custody:</p> <p>Provided that, where any person is taken into custody and it is not possible to issue a document as specified in this section, it shall be the duty of the arresting officer if such officer is a police officer, to make an entry in the information book, giving reasons as to why it is not possible, and if the arresting officer is a member of the armed forces or a coast guard officer to report to the officer in charge of the police station the reasons why it is not possible to issue such document and the officer in charge shall make an entry of such fact along with the reasons therefor in the information book.</p> <p>(2) Such notification shall include-</p> <ul style="list-style-type: none"> (a) the date, time and place of arrest; (b) reasons for the arrest; (c) the location of custody or detention; 	<p>This provision is an improvement from the PTA. However, it is desirable that the fact that the suspect is being arrested under the ATA is communicated immediately, even though the rest of the information is notified within twenty-four hours. This is especially so in the case of informing the HRC, as there is no need to ascertain a means of communication with them and it can be done online instantly.</p> <p>Further, the person who the notification is sent to should be a person of the suspects choosing. As the section presently reads, it suggests that it shall be a person specified in Sub-Clause (1). However, it would be in the best interest of the suspect for them to decide who is notified, as the persons defined may not always have a regard for their best interest.</p>

		<p>(d) the name, identification number and rank of the arresting officer, and</p> <p>(e) any other information as may be necessary for the next of kin of the suspect, to have reasonable access to him, without prejudice to the conduct of investigations.</p> <p>(3) If such a person specified in subsection (1) is not present, the arresting officer shall inquire from the suspect, the identity and whereabouts of a person to whom the notification referred to in subsection (1) shall be served, and if the suspect provides such information, every possible step shall be taken to serve the notification on such person. A copy of the said notification shall be served on the suspect.</p> <p>(4) The officer in charge of the police station wherein the suspect is detained shall, as soon as practicable, and in any event not later than twenty-four hours of the arrest, notify the Human Rights Commission of Sri Lanka of such arrest and detention, substantially in the form set out in the Second Schedule, and notify the Inspector General of Police or his authorized representative, substantially in the form set out in the Third Schedule.</p> <p>(5) Such notification shall include—</p> <ul style="list-style-type: none">(a) the date, time and place of arrest;(b) reasons for the arrest;(c) the location at which the suspect is being held in detention;(d) the name, identification number and rank of the arresting officer;	
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		<p>(e) any other information that would enable the Human Rights Commission of Sri Lanka to have prompt access to the suspect; and</p> <p>(f) any other information the Human Rights Commission of Sri Lanka may call for, in order to determine whether such arrest and detention has infringed the fundamental rights of the relevant person.</p>	
<p>Central Data-Base Register</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 27 -Central Database and Register</p> <p>(1) The Inspector General of Police shall establish and maintain a central database and register, which contains information with regard to each arrest, detention, remanding, grant of bail, discharge, prosecution, conviction or acquittal and punishment of persons arrested under this Act.</p> <p>(2) Such Data Base and Register shall also include such other information required to determine the –</p> <p>(a) lawfulness of the arrest, custody and detention;</p> <p>(b) lawfulness of the deprivation of liberty of the suspect; and</p> <p>(c) the need for continued detention or remand.</p> <p>(3) The Inspector General of Police shall provide information in respect of the identity of the person arrested, date of arrest, reason for arrest, place of detention in such database and register, to the Human Rights Commission of Sri Lanka, wherever the Human Rights Commission of Sri Lanka so requests.</p> <p>(4) The information received under subsection (3), shall be used only for the purposes of giving effect to</p>	<p>This provision is an improvement from the PTA. The maintaining of a Data-Base Register of this nature under the proposed ATA is important for the purpose of documentation, but a system must be in place that does not permit the alteration of records, and to ensure that all information recorded is true and reliable.</p> <p>In the previous version of the ATA, the 5th sub-section read as “(5) It shall be the duty of the Human Rights Commission to ensure that no person shall use the information received under subsection (3) in such manner that may be prejudicial to the on-going investigations.” This subsection has been removed under the September version of the Bill.</p> <p>In addition, sub-section 4 now refers to “the powers and functions” of the Human Rights Commission of Sri Lanka, which is distinct from the</p>

		<p>the powers and functions of the Human Rights Commission of Sri Lanka.</p>	<p>previous version’s terminology “objective”.</p> <p>The aforesaid changes reflect the implications of the provision in determining the scope provided for the Human Rights Commission of Sri Lanka in accessing the information regarding any arrests made.</p> <p>Anti-terrorism laws have been used and abused in Sri Lanka in the past. Therefore, it is imperative that the Human Rights Commission has the power to utilise the information it acquires in ways that ensure the rights of persons arrested.</p>
<p>Procedure for arrest and remand</p>	<p>Section 07- Remand orders (1) Any person arrested under subsection (1) of section 6 may be kept in custody for a period <u>not exceeding seventy-two hours</u> 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</p>	<p>Clause 28 – Production before Magistrate (1) A suspect- (a) who has been arrested and detained by a police officer in terms of this Act; or (b) who has been arrested by an officer other than a police officer and produced before the officer in charge of a police station or a designated police officer in terms of section 20,</p> <p>shall be produced before the nearest Magistrate not later than forty-eight hours following the arrest:</p> <p>Provided however, where the arrest has been carried out,</p>	<p>A significant improvement of the ATA is that it requires the suspect to be produced before the Magistrate within forty-eight hours, in comparison to the PTA which permitted the suspect to be kept in remand custody for a period not exceeding seventy-two hours before producing before a Magistrate.</p> <p>While the CTA required that the suspect be produced before ‘any’ magistrate, which raised concerns, this has been remedied in the proposed ATA, requiring that it be the nearest magistrate.</p>

<p>Bail</p>	<p>conclusion of the trial of such person :</p> <p>Provided that, where the Attorney-General consents to the release, of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody.</p> <p>(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:</p> <p>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 authorize 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.</p>	<p>within the territory of the Republic of Sri Lanka, the period of time necessary for the journey from place of arrest to the relevant Magistrate shall be excluded in calculating such forty-eight hours:</p> <p>Provided further, where the arrest has been carried out outside the territory of the Republic of Sri Lanka or on board any aircraft or vessel, the period of time necessary for the journey from place of arrest to the relevant Magistrate shall be excluded in calculating such forty-eight hours.</p> <p>(2) Where, by the time the suspect is produced before a Magistrate—</p> <p>(a) a valid Detention Order has been issued in terms of section 31, and is placed before the Magistrate for his inspection, the Magistrate shall make an order to give effect to such Detention Order; or</p> <p>(b) a Detention Order has not been issued or such a Detention Order has not been placed before the Magistrate, the Magistrate may—</p> <p>(i) if the officer in charge of the relevant police station makes an application seeking an order to remand the suspect, based on grounds that the Magistrate deems reasonable in the circumstances, order that the suspect be placed in remand custody;</p> <p>Provided however, where the Magistrate is satisfied that there are no reasonable grounds, the suspect may be discharged; or</p>	<p>It is notable that the Clause 28(1) in the September version of the Proposed ATA has two provisos, where the first is regarding the arrests carried out within the territory of Sri Lanka and the second refers to arrests made outside the territory of Sri Lanka.</p> <p>Further, the proviso to Clause (2) (b) (i) is a new addition to the ATA that was not present in the CTA, and is a welcome addition.</p> <p>The new version has revised the proviso and stipulates that “Provided however, where the Magistrate is satisfied that there are no reasonable grounds, the suspect may be discharged”.</p> <p>Due to its importance, it is desirable for bail to be a stand-alone section, as opposed to a proviso to another section. This could allow for clarity as to when and on what conditions the Magistrate can release a suspect on bail.</p> <p>Further, it is a welcome improvement that the Magistrate is able to personally see the suspect, look into his well-being and welfare through a private interview, and record any</p>
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	<p>Section 19 -Provisions of any written law relating to the grant of bail not to apply to persons accused of any offence under this Act. (As amended in 2022)</p> <p>Notwithstanding the provisions of any other written law, 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:</p> <p>Provided however, that the Court of Appeal may in exceptional circumstances release on bail any such person subject to such conditions as the Court of Appeal may deem fit.</p>	<p>(ii) if the officer in charge of the relevant police station requests or has no objection to bail being granted, release the suspect on bail under the provisions of Bail Act, No.30 of 1997, upon conditions to be stipulated by such Magistrate, excluding personal bail; or</p> <p>(iii) discharge the suspect, if the officer in charge of the relevant police station so requests on any ground that the Magistrate is satisfied.</p> <p>(3) The Magistrate before whom the suspect is produced, shall–</p> <p>(a) personally see the suspect, and look into his wellbeing and welfare through a private interview; and</p> <p>(b) record any comment the suspect may provide.</p> <p>(4) For the purpose of this section “private interview” means proceedings, either in open court or in Magistrate’s chamber in the absence of any police officer who may have participated in the arrest, or who has investigated into the offence, alleged to have been committed by the suspect.</p>	<p>comment the suspect may provide. However, Sub-Clause (4) should also exclude any police officer with any interest in the alleged offence in addition to excluding any police officer who participated or investigated into the offence.</p>
<p>Forensic medical examination</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 29- Magistrate to direct the suspect to a forensic medical examination</p> <p>(1) Where the Magistrate is of the opinion, that the suspect may have been subjected to cruel, inhumane or degrading treatment or torture, after taking into account any comment made by the suspect under section 28 and any representation made by the arresting officer or</p>	<p>It must be borne in mind that a suspect needs to be produced before a magistrate only 48 hours after the arrest, and that may include a further 24 hours in the case of an arrest by a member of the armed forces or coast guard as they have an additional 24</p>

		<p>officer in charge of the relevant police station, the Magistrate shall –</p> <p>(a) direct that the suspect be produced before a Judicial Medical officer for medical examination, and a report be submitted to the Magistrate by such Judicial Medical Officer; and</p> <p>(b) make an order to change the place of detention of the suspect.</p> <p>(2) Where the report of the Judicial Medical Officer reveals that there is a probability of the suspect has been subjected to torture, the Magistrate shall, after giving an opportunity to the suspect and the arresting officer or officer in charge of the police station to be heard, –</p> <p>(a) direct the suspect for necessary treatment; and</p> <p>(b) order that the suspect be placed in remand or detention.</p> <p>(3) Where the Magistrate orders that the suspect be placed in remand, police officers who previously had access to the suspect shall not have access to the suspect.</p> <p>(4) The investigation in respect of such suspect shall be continued by such other police officers as directed by the Inspector General of Police.</p> <p>(5) The Magistrate shall also direct the Inspector General of Police to commence an investigation into the alleged torture to enable the Attorney General to institute criminal proceedings against the person who committed the alleged torture.</p>	<p>hours before they need to produce the suspect before the police.</p> <p>In such time, significant harm could have been done to a suspect, and it is also possible that outward signs of torture may have even begun to heal.</p> <p>The proposed CTA included an additional section 24, which required that the OIC of the police station make a record of any injuries that may be visible on the suspect at the time of the arrest; it is unclear why this section has been omitted.</p> <p>The introduction of Sub-Clause (5) is important, in recognition of the impunity that often follows police torture in Sri Lanka. However, the success of such a section depends on administrative will, and inclusion in the statute books alone will not ensure change.</p>
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<p>Maximum period of remand</p>	<p>Section 15B - Introduced via the 2022 Amendment - Grant of Bail to persons in remand or detention</p> <p>Notwithstanding anything to the contrary in the provisions of this Act, if the trial against a person remanded or detained under this Act has not commenced after the expiration of twelve months, from the date of arrest, the Court of Appeal may release such person on bail, upon an application in that behalf, made by the suspect or an Attorney- at-Law on his behalf:</p> <p>Provided however, notwithstanding the provisions of subsection (2) of section 15, the High Court may in exceptional circumstances release the suspect on bail subject to such conditions as the High Court may deem fit:</p> <p>Provided further, where the trial against an accused in respect of whom the indictment has been forwarded and filed in the High Court, has not commenced after the expiration of twelve months from the date of such filing, the High Court may consider to release such person on bail,</p>	<p>Clause 30 - Maximum period of remand</p> <p>(1) Any person shall not be held in remand for a period exceeding one year from the date of his arrest without instituting criminal proceedings:</p> <p>Provided, however, the period of remand may be extended on an order of a Judge of the High Court, on an application made by the Attorney General which shall not, in any case exceed three months at a time.</p> <p>(2) If criminal proceedings are not instituted within the period referred to in subsection (1), the Magistrate shall release the suspect on bail, on conditions to be stipulated by the Magistrate.</p>	<p>Originally, the PTA permitted remand custody “until the conclusion of the trial” which potentially allowed for the indefinite detention of a suspect. This was mitigated through the 2022 Amendment to the PTA which gave the Court of Appeal and High Court the power to release a suspect on bail, and is further mitigated under the proposed ATA by stipulating a maximum period of remand, after which the Magistrate is to release the suspect on bail. However, it appears that on an order of a High Court, upon an order made by the Attorney General, the remand may be extended indefinitely, three months at a time.</p> <p>Under the proposed CTA the maximum period of remand was six months (which has been extended to one year under the ATA). Further, there was a maximum of a further six months that the remand could be extended on the order of the High Court on an application of the AG, thus eliminating the possibility of indefinite remand. This is thus a considerable step back from the position that was seen in the CTA.</p>
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	upon an application in that behalf made by the accused or an Attorney-at-Law on his behalf.		
Detention Orders	<p>Section 09- Detention Orders (as amended in 2022)</p> <p>(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:</p> <p>Provided, however, that the aggregate period of such detention shall not exceed a period of twelve months.</p> <p>(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.</p>	<p>Clause 31- Detention orders</p> <p>(1) (a) The Inspector General of Police or any officer not below the rank of a Deputy Inspector General of Police authorized by the Inspector General of Police in that behalf may seek a Detention Order to detain a suspect for any purpose specified in subsection (2) by way of an application made in that behalf in writing to the Secretary to the Ministry of the Minister of Defence.</p> <p>(b) Upon receipt of an application under subsection (1), if the Secretary to the Ministry of the Minister of Defence is satisfied of the existence of reasonable grounds to believe that the suspect has committed or has concerned in committing an offence under this Act, he may after recording such reasons, issue a Detention Order substantially in the form specified in the Fourth Schedule, authorizing the detention of the suspect in an approved place of detention under approved conditions of detention.</p> <p>(c) A Detention Order under this section may initially be issued for a period not exceeding two months.</p> <p>(2) A Detention Order under subsection (1), shall include reasons for the issuance thereof, and shall be</p>	<p>The power to issue Detention orders is vested with the Secretary to the Ministry of the Minister of Defence, similar to the PTA, where the Minister has broad powers in relation to Detention Orders.</p> <p>Under the previous version of the ATA from March 2023 (similar to the CTA), the power to grant Detention Orders were placed under the Deputy Inspector of Police which also raised concerns. It is also noteworthy that the CTA took additional steps of reducing the period that a Detention Order could be issued for up to 2 weeks.</p> <p>Notably, in the previous version of the ATA from March 2023, a Detention order could be issued for a period of 3 months as was the case with the PTA. The recent version of the ATA has deviated from this position, and has reduced the time period to two months.</p> <p>Similar to the CTA, this Clause also specifies that detention orders should</p>

	<p>(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.</p> <p>9A Certified copy of the detention Order to be served on the Magistrate (included via the 2022 amendment)</p> <p>(1) The officer in charge of the place of detention shall, forthwith and in any case, not later than forty-eight hours from the time of issuance of an Order under section 9, make available a certified copy of such Order to the Magistrate within whose judicial division the place of detention of the person in respect of whom such Order relates is situated, for the Magistrate to visit such place of detention, in terms of section 9B.</p> <p>(2) The detention of any person under section 9 shall be communicated to the Human Rights Commission of Sri Lanka in terms of section 28 of the Human Rights Commission of Sri Lanka Act, No.</p>	<p>issued solely for following purposes, where it is necessary: –</p> <p>(a) to facilitate the conduct of the investigations in respect of the suspect;</p> <p>(b) to obtain material for investigations and potential evidence relating to the commission of an offence under this Act;</p> <p>(c) to question the suspect in detention; and</p> <p>(d) to preserve evidence pertaining to the commission of an offence under this Act, for such reasons to be recorded in the Detention Order.</p> <p>(3) Where a Detention Order under this section has been issued at the time when the relevant suspect is produced before a Magistrate under section 28, a certified copy of such Detention Order shall be placed before the Magistrate for inspection.</p> <p>(4) A copy of every Detention Order under this section shall be served on the suspect being detained, within a period of 48 hours from such Order, and the acknowledgement thereof by the suspect shall be obtained and filed in the relevant Magistrate Court.</p> <p>(5) A copy of the Detention Order shall be served on the next of kin or an adult family member of the suspect within a period of forty-eight hours from such Order and the provisions of section 26, shall <i>mutatis mutandis</i>, apply to the manner of serving such copy.</p> <p>(6) The President shall, on the recommendation of the Inspector General of Police, by Order published in the <i>Gazette</i>, specify such a number of places as “approved places of detention” for the purpose of this section.</p>	<p>be issued solely for the purposes specified in the Clause and where necessary. While setting out such circumstances can mitigate potential abuse of Detention orders, the circumstances listed are broad and still make leeway for abuse.</p> <p>It is also a positive development that the ATA makes provisions for a copy of the Detention Order to be served on the suspect and their next of kin.</p> <p>Also positive is the proposal to consult the Human Rights Commission in deciding the conditions of detentions. However, it should be ensured that the input of the HRC is actually taken into account, and given effect to.</p> <p>However, due measures should be taken so that juvenile persons should be detained separately from adults. And further women should be separately detained from men.</p> <p>Further, the approved places of detention were to be Gazetted by the Minister under the CTA, and the power has been given to the President under the ATA. This raises questions on whether such a move has been done to bypass the writ jurisdiction of the Court of Appeal where proceedings</p>
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	21 of 1996, for the persons authorized by the Human Rights Commission of Sri Lanka to visit the place of detention in terms of that Act.	(7) The President shall, in consultation with the Inspector General of Police and the Human rights Commission of Sri Lanka, specify by Order published in the <i>Gazette</i> , such conditions of detention as “approved conditions of detention” for the purpose of this section.	against the President may not be instituted.
Visit to place of detention by Magistrate	<p>Section 9B - Duty of the Magistrate to visit place of detention (included via the 2022 amendment)</p> <p>(1) it shall be the duty of every Magistrate who has received a certified copy of a detention Order in terms of subsection (1) of section 9A, to visit the place of detention of the person to whom the Order relates (in this section referred to as the "suspect") at least once in every month during the period of detention, to ensure that the suspect is protected to the extent provided for in the Convention Against Torture and other Cruel, Inhumane or degrading Treatment or Punishment Act, No.22 of 1994.</p> <p>(2) For the purpose of subsection (1), the Magistrate who visits any place of detention, shall -</p>	<p>Clause 32- Magistrate to visit the place of detention</p> <p>(1) A Magistrate before whom a suspect has been produced and detained under the authority of a Detention Order shall, without giving any advance notice to the authority in charge of such place of detention-</p> <p>(a) visit once a week the place of detention of such suspect; and</p> <p>(b) interview the suspect and look into his well-being.</p> <p>(2) It shall be the duty of the authority in charge of any place of detention to provide prompt and unimpeded access to the Magistrate.</p> <p>(3) If the Magistrate observes that the suspect may have been subjected to torture or the suspect alleges that he was tortured, the Magistrate shall make order, for the suspect to be produced for examination by a Judicial Medical Officer, and to submit the report to him.</p> <p>(4) After giving the suspect and the relevant police officer or officers an opportunity to be heard, if the Magistrate is satisfied that there is reasonable grounds to believe that the suspect may have been tortured, he</p>	<p>The proposed ATA provides for the addition of notable provisions which permits the Magistrates to be involved in monitoring the detention of the suspect.</p> <p>However, there remains a question of how practical it is for a magistrate to visit the place of detention with that regularity, thus raising the concern that the process may not be fully implemented as per the procedure in the ATA.</p> <p>Additionally, under Clause 38, it is required that the suspect is produced before the Magistrate every 14 days during the pendency of the Detention Order.</p> <p>Under the PTA, following the 2022 Amendment, the power is given to the Magistrate to change the place of detention of the suspect if there are signs of torture on the suspect. This</p>

	<p>(a) personally see the suspect, and look into his wellbeing, welfare and conditions under which he is kept at such place of detention; and</p> <p>(b) record his observations and any complaint the suspect may make.</p> <p>(3) Where the Magistrate is of the opinion, that the suspect may have been subjected to torture, the Magistrate may -</p> <p>(a) direct that the suspect be produced before a Judicial Medical Officer for medical examination, and a report be submitted to him by such Judicial Medical Officer; and</p> <p>(b) make an order to change the place of detention of the suspect.</p> <p>(4) Where the report of such Judicial Medical Officer reveals that the suspect has been subjected to torture, the Magistrate shall make an appropriate order, to provide necessary medical treatment to the suspect.</p> <p>(5) The Magistrate shall also direct the Inspector General of Police to commence an investigation into the alleged torture in order to enable the Attorney-General to institute</p>	<p>shall act in terms of subsections (2), (3), (4) and (5) of section 29.</p>	<p>power is not expressly contained in the ATA.</p>
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	criminal proceedings against the person who is alleged to have committed the torture.		
Notification of detention to the Human Rights Commission.	No equivalent provision in the PTA.	<p>Clause 33- Notification of detention to the Human Rights Commission of Sri Lanka</p> <p>(1) The officer in charge of the place of detention in which a suspect is detained shall notify the Human Rights Commission of Sri Lanka of such detention, as soon as practicable but in any event not later than seventy-two hours from the commencement of detention, for the persons authorized by the Human Rights Commission of Sri Lanka to visit the place of detention in terms of the Human Rights</p> <p>(2) A copy of the Detention Order shall be served on the Human Rights Commission of Sri Lanka, as soon as practicable.</p>	<p>The ATA makes provisions for the Human Rights Commission to be involved in monitoring the detention of the suspect in this Clause and subsequent Clauses which is an improvement from the PTA.</p> <p>However, it is unclear why a period as long as 72 hours is needed to inform the HRC of the detention.</p> <p>In the previous version of the ATA, Clause 33(1) specified “The officer in charge of the police station wherein a suspect is detained shall notify the Human Rights Commission of Sri Lanka”. This is changed in the new version of the ATA to “place of detention” which is broad, and can entail any location.</p>
Human Rights Commission to visit places of detention	No equivalent provision in the PTA.	<p>Clause 34- Human Rights Commission of Sri Lanka to visit an approved place of detention</p> <p>An authorized officer of the Human Rights Commission, shall without giving any advance notice, be entitled to-</p> <p>(a) enter and examine any approved place of detention;</p>	<p>In order to ensure the better access of the Human Rights Commission to the suspect it is vital that the interview process is permitted to be conducted in private without the presence of Police officers.</p> <p>It is noteworthy that proviso to Clause 34 found in the previous version of the</p>

		<p>(b) call for and inspect detention registers, Detention Orders and other books and documents required to be maintained at such place; and</p> <p>(c) interview persons being detained at such place:</p>	<p>Proposed ATA (“Provided however, the officer of the Human Rights Commission shall not be entitled to examine notes of investigations and recorded statements of witnesses or, of other persons”) is omitted in the proposed ATA.</p>
<p>Magistrates entitled to visit any place of detention</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 35 – Magistrates to be entitled to visit any place of detention Any Magistrate shall be entitled, without advance notice, to enter an approved place of detention, inspect such place of detention, registers, Detention Orders and other books and documents required to be maintained at such place, and interview persons being detained at such place.</p>	<p>This provision is an improvement from the PTA and reflects international law and best practices.</p>
<p>Maximum period of Detention</p>	<p>Section 9 – Detention orders (as amended in 2022) (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:</p>	<p>Clause 36 – Detention beyond two months only with approval of a Magistrate (1) Where it is necessary to detain a suspect in terms of a Detention Order made under section 31 beyond a period of two months, the officer in charge of the relevant police station shall file a confidential report in the Magistrate Court citing- (a) the allegation against the suspect; (b) the findings of investigation; and (c) reasons which require further detention, and obtain the approval of the Magistrate for such continued detention. (2) The Magistrate shall ensure that the disclosure of information in such report does not affect the investigation.</p>	<p>This provision is an improvement from the PTA in terms of the requirement of the approval of the Magistrate to extend detention beyond the period of the initial Detention Order. However, filing of a confidential report in the Magistrate Court remains problematic given the scope for abuse for such a confidential report, and the lack of provision permitting the accused person and their attorney-at-law accessing the contents of the report being used against them.</p> <p>The PTA permitted individuals to be detained upon a Detention Order</p>

	<p>Provided, however, that the aggregate period of such detention shall not exceed a period of twelve months.</p>	<p>(3) The submissions of the police officer seeking extension of the period of detention and the objections raised by the suspect or his Attorney – at – Law for such extension, shall be recorded by the Magistrate.</p> <p>(4) The Magistrate may order the extension of the period of detention or refuse such extension, giving reasons therefore.</p> <p>(5)</p> <p>(a) Where the Magistrate refuses to grant the extension of the Detention Order he shall inquire whether there exists any justifiable reason to remand the suspect.</p> <p>(b) After the inquiry, if the Magistrate is of the opinion that there exists reasonable ground to believe that the suspect may have committed an offence under this Act, the suspect shall be placed in remand custody.</p> <p>(c) Where there is no reason to believe that the suspect has committed an offence under this Act, he shall be discharged.</p> <p>(6) The proceedings under this section shall be held <i>in-camera</i>, subject to Article 106 of the Constitution.</p>	<p>issued by the Minister against any individual suspected of being “connected with or concerned in any unlawful activity”. Such an order was permitted to be renewed up to a total of 18 months (and then amended to limit it to 12 months in 2022) and expressly excludes any judicial review of its legality under section 10 of the PTA. The proposed Clause in the Proposed ATA therefore, is a positive improvement from the archaic PTA.</p> <p>The proposed ATA empowers the Magistrate to send a detainee to regular remand custody or release him from detention if there is reason to believe that he has committed an offence.</p> <p>A notable provision under the proposed ATA is that the proceedings</p>
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			<p>under this Clause will be held <i>in camera</i>. The ‘in-camera’ proceeding is either when the hearing is held before the judge in his private chambers or the public is excluded from the courtroom. It is of vital importance to remember that the right to a fair trial involves the right to a public hearing. Therefore, any restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate as assessed on a case-by-case basis.</p> <p>Additionally, the proposed ATA had a provision which allowed for the suspect or his Attorney-at-Law to inspect the information provided to the Magistrate by the police seeking the extension of a detention order, for the purpose of objecting to it. It is important that they are able to access this information in order to be properly able to respond and object, and the failure to do so would amount to a failure of the fundamental principles of a fair trial.</p> <p>Additionally, it should be noted that the language of Clause 36(2) has changed in the new version of the ATA from the previous version. In the previous version, Clause 36(2)</p>
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			stipulated “The Magistrate shall ensure the confidentiality of the report so filed”. Currently, the provision underpins that the disclosure of the information should not affect the investigation. Such a provision could be used to restrict access to information, when required, on the basis of information disclosure potentially affecting the investigation.
Maximum period of Detention	<p>Section 9 (1) – Detention Orders (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:</p> <p>Provided, however, that the aggregate period of such detention shall not <u>exceed a period of twelve months</u></p>	<p>Clause 37- Maximum period of detention under Detention Orders A suspect shall not be detained for a period exceeding twelve months under Detention Orders made under section 31.</p>	This provision reflects the same time frame of twelve months as per the 2022 Amendment to the PTA.

<p>Suspect to be produced before a Magistrates</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 38- Suspect to be produced before a Magistrate (1) During the pendency of a Detention Order, the suspect shall be produced before a Magistrate once in every fourteen days. (2) The Magistrate shall comply with the provisions of section 28 upon the suspect being produced before the Magistrate. (3) Upon completion of the period of detention under a Detention Order, the suspect shall be produced before a Magistrate. (4) Following the examination of a report submitted by the officer in charge of the police station on the investigation in respect of the offence alleged to have been committed by the suspect, if the Magistrate is satisfied that, there exists <i>prima facie</i>, a basis to conclude that the suspect has committed an offence under this Act, he shall direct that the suspect be detained in remand custody.</p>	<p>This provision is an improvement from the PTA and provides judicial oversight during the period of detention. This is in addition to Clause 32 which requires that the Magistrate visits the place of detention once in two weeks as well.</p>
<p>Police officers access to suspect</p>	<p>Section 7 (3) of the PTA, granted far-reaching powers to a police officer to access a suspect in remand. The Section states: 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"</p>	<p>Clause 39- Police officer to have access to suspect in remand or prison (1) A police officer conducting an investigation under this Act, shall under the authority of an order issued by the Magistrate-</p> <ul style="list-style-type: none"> (a) have access to a suspect placed in remand custody, and interview the suspect; (b) record his statements, with the permission given by the Magistrate on an application made to such Magistrate in that behalf; 	<p>It is hoped that judicial oversight in the process of investigation of the suspect while in remand or prison will reduce the risk of the suspect being tortured or subjected to cruel inhuman degrading treatment and punishment. This provision is an improvement from the PTA. The requirement of the presence of a prison officer during the interactions between the police officer and the</p>

	<p>(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;</p>	<p>(c) take the suspect out of the remand for the purpose of conducting further investigations under the authority of an order made by a Magistrate:</p> <p>Provided however, an officer of the Prisons Department shall be present at every referred to in paragraphs (a), (b) and (c).</p> <p>(2) Where a suspect has been convicted of any other offence other than an offence specified in this Act, and serving a term of imprisonment, a police officer conducting an investigation under this Act, shall under the authority of an order issued by the Magistrate, be entitled to -</p> <p>(a) have access to such suspect in the prison, and interview the suspect; (b) record his statements, with the permission given by the Magistrate on an application made to such Magistrate in that behalf; (c) take the suspect out of the prison for the purpose of conducting further investigations under the authority of an order made by a Magistrate:</p> <p>Provided however, an officer of the Prisons Department shall be present at every referred to in paragraphs (a), (b) and (c).</p>	<p>suspect is further recognition of the abuses that take place at the hands of the Police, especially extrajudicial killings that take place when suspects are taken out of the prison premises.</p> <p>It is not described how the process of making an application for the authority to do so is to take place, and on what basis the Magistrate must give the officer the authority to do so.</p>
<p>Detention during remand</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 40 - Detention during remand</p> <p>(1) Where the officer in charge of a police station receives information which he believes to be true, that a person remanded under this Act--</p> <p>(a) is committing an offence under this Act; (b) is making preparations or attempting to commit an offence under this Act;</p>	<p>The possibility of abuse of powers by the Police officer is mitigated by the oversight of the Magistrate and the Human Rights Commission in this process. This is an improvement in contrast to the PTA.</p>

		<p>(c) is attempting to escape from remand custody; or (d) had committed an offence under this Act prior to being arrested and such officer in charge of a police station was unaware of such fact, he shall report such information to the relevant Magistrate.</p> <p>(2) The Magistrate shall immediately inquire into such information and at the conclusion of the inquiry, if the Magistrate is satisfied that, the officer in charge of the police station had acted in good faith and the allegation against the suspect made by the police, appears to be well founded, and where the Magistrate deems it expedient to keep the suspect under detention, he may on the production of a Detention Order issued under this Act, permit the officer in charge of the police station-</p> <ul style="list-style-type: none"> (a) to take custody of the suspect; (b) to take custody of the suspect and keep him in remand; (b) to remove the suspect from remand; and (c) to have such suspect detained in terms of such Detention Order, and (e) to order that the suspect be in isolation or under security. <p>(3) The Detention Order made under this section shall—</p> <ul style="list-style-type: none"> (a) be issued by the Deputy Inspector General of Police of the area in which the suspect is remanded; (b) be for a period of two weeks at a time for cumulative period of twelve weeks; and (c) be reviewed by the Magistrate in every fourteen days. 	<p>However, the need to issue such further detention order must be assessed strictly and only be issued with good reason. The failure to do so would allow the police leverage to further deny the liberties of a suspect.</p> <p>In the previous version of the ATA, a period of two weeks was given to a detained person to lodge an appeal. This has been completely removed under the revised version of the ATA gazetted in September.</p>
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		(4) The transfer of the suspect from remand custody to detention, shall be notified to the Human Rights Commission of Sri Lanka.	
Release from remand custody and detention	<p>Section 7 (1) and proviso to the section states the follows</p> <p>(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:</p> <p>Provided that, where the Attorney-General consents to the release, of such person from custody before the conclusion of the trial, the Magistrate shall release such person from custody.</p>	<p>Clause 41- Release from remand custody and detention</p> <p>(1) A suspect arrested under this Act, shall only be released from remand custody or detention, after production before a Magistrate and subject to any condition that the Magistrate may impose.</p> <p>(2) The release of the suspect shall be notified to the Human Rights Commission of Sri Lanka by the officer in charge of the relevant police station, giving adequate time as may be necessary for the Human Rights Commission of Sri Lanka to send an officer authorized in writing, to be present when the release takes place.</p>	<p>A significant improvement under ATA is that it removes the requirement of having the Attorney General’s consent to release a detainee. Thus, the Magistrate has the power to determine the release and any conditions therewith.</p> <p>It is also noteworthy that the Clause makes provision for the Human Rights Commission to be notified and be present when the suspect is being released.</p>

<p>Right to an attorney</p>	<p>Section 10A – An Attorney – at – Law to have access to a person in remand or in detention</p> <p>(1) An Attorney- at- Law representing a person remanded or detained under this Act, shall have the right of access to such person and to make representations on behalf of such person, subject to such conditions as may be prescribed by regulations made under this Act or as provided for in other written law</p> <p>(2) A person remanded or detained under this Act shall have the right to communicate with his relatives, as provided for in written law.</p>	<p>Clause 42 – An Attorney-at-Law to have access to a person in remand or in detention</p> <p>(1) An Attorney-at-Law representing a person remanded or detained under this Act, shall have the right of access to such person and to make representations on behalf of such person, subject to such conditions as may be prescribed by a regulation made under this Act or as provided for in other written law.</p> <p>(2) A person remanded or detained under this Act shall have the right to communicate with his relatives, as provided for in written law.</p>	<p>Following the 2022 amendment to the PTA, suspects now have access to their Attorney – at – Law while in remand or detention. However, the PTA post-amendment also gives the next of kin of such detainees the right to communicate with them which the ATA fails to do.</p> <p>In order to facilitate access to counsel, free legal aid should be provided to the suspect when necessary. It is also preferable that the Clause is re-worded as ‘Right of an attorney at law to represent a suspect or appointed to protect his interest by his next of kin or family’.</p> <p>Clause 42(2) is a new and welcome addition to the version of the ATA gazetted in September 2023.</p>
<p>Application of the Criminal Procedure Code</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 43 – Certain sections of the Code of Criminal Procedure Act not to apply</p> <p>The provisions of sections 115 and 116 of the Code of Criminal Procedure Act shall have no application in 10 relation to a suspect under this Act.</p>	<p>Section 115 of the Code of Criminal Procedure deals with the Procedure when an investigation cannot be completed in twenty-four hours.</p> <p>Section 116 deals with the duty of an officer or inquirer to forward a case to a Magistrate's Court if sufficient information is well-founded.</p>

	No equivalent provision in the PTA.	<p>Clause 44 – Application of the Code of Criminal Procedure Act</p> <p>Subject to the provisions of this Act, the provisions of the Code of Criminal Procedure Act shall mutatis mutandis apply to any legal proceeding under this Act.</p>	This is a positive addition to the Act. This would allow the protections afforded under ordinary criminal justice laws to be extended to the ATA.
Proceedings before Magistrate Court	No equivalent provision in the PTA	<p>Clause 45 – Proceedings before Magistrate Court</p> <p>Notwithstanding the provisions of section 9 of the Code of Criminal Procedure Act, the investigation and proceedings in respect of a suspect under this Act who had previously been produced before a Magistrate, shall be held in the Magistrate Court in which such Magistrate was presiding at the time the suspect was previously produced.</p>	
Suspect to be treated humanely	No equivalent provision in the PTA.	<p>Clause 46 – Suspect to be treated humanely</p> <p>(1) The place of detention or remand of the suspect, detained or remanded, as the case may be, under the provisions of this Act, shall be provided with the requirements necessary for humane treatment, and such place of detention shall be accessible to the family members of the suspect, and to his Attorney-at-Law with the prior permission obtained from the officer in charge of such place of detention or prison.</p> <p>(2) Where it appears to the Human Rights Commission of Sri Lanka or the Magistrate, at an inspection of the place of detention or remand under the provisions of this Act that the place of detention or remand, does not confirm to the requirements referred to in subsection (1), such fact shall be informed -</p>	<p>This provision is an improvement from the PTA and is in line with international law and best practices including Article 10(1) of the ICCPR which requires that all persons deprived of their liberty “shall be treated with humanity and with respect for the inherent dignity of the human person”.</p> <p>However, the question of whether these humane conditions are maintained in places of detention or remand are based on proper implementation of these sections, and the inclusion in the statute book alone will not result in these conditions.</p>

		<p>(a) to the Inspector General of Police in cases of detention; or (b) to the Superintendent of the Prisons in cases of remand.</p> <p>(3) It shall be the duty of the Inspector General of Police or the Superintendent of the Prisons, as the case may be, to take steps to the greatest extent possible, to treat the suspect humanely.</p> <p>(4) The officer in charge of the place of detention wherein a suspect is kept in custody shall, where the suspect is –</p> <p>(a) detained for a period exceeding one month; or (b) placed in remand, pending commencement of the trial; or (c) placed in remand, pending conclusion of the trial,</p> <p>issue a notification to the next of kin of the suspect and to the Human Rights Commission of Sri Lanka, containing following information: –</p> <p>(i) the grounds on which, the extension of the period of detention or remand was ordered; (ii) in situations where the suspect is being detained, without prejudice to the on-going investigations, information needed for the investigations to be conducted diligently and expeditiously; and (iii) in situations where the suspect is being held in remand custody, reasons as to why institution of criminal proceedings cannot be initiated immediately, or the trial cannot be commenced immediately or the trial cannot be concluded expeditiously, as the case may be.</p>	
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PART IV –POWER AND DUTIES OF CERTAIN OFFICERS UNDER THIS ACT

PROVISION	PREVENTION OF TERRORISM ACT (PTA)	ANTI-TERRORISM BILL (PROPOSED ATA)	COMMENTS
<p>Powers of Police officers under this Act</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 47 – Powers of Police officers under this Act.</p> <p>For the purpose of conducting investigations into offences under this Act and offences under any other written law that may have been committed in the course of the same transaction, or to prevent the commission of any such offence, police officers shall be vested with the powers specified in this Part in addition to any power conferred on them by the Police Ordinance or the Code of Criminal Procedure Act or any other written law, to the extent that may be necessary for investigating and preventing offences under this Act..</p>	<p>This Clause is to be read as a whole with Part IV. It gives extensive powers to the police to conduct investigations, “into offences under this Act and <u>offences under any other written law</u> that may have been committed in the course of the same transaction.” In very broad terms, the police are given powers to prevent any such offence from being committed, before it even transpires.</p>
<p>Duty of certain officers to prevent the commission of offences under this Act.</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 48 – Duty of certain officers to prevent the commission of offences under this Act</p> <p>(1) It shall be the duty of every police officer and any member of an armed force and a coast guard officer to take necessary measures subject to the provisions of this Act, to prevent the commission of an offence under this Act.</p> <p>(2) For the purpose of subsection (1), any such officer may take such measures-</p>	<p>The broad powers granted to the police, members of armed forces, and coast guards under subsection (1) of this Clause are subjected to certain restrictions and control in subsections (2) and (3) of the Clause, including necessity and proportionality. However, there are concerns with regard to the necessity of entrusting a wide</p>

		<p>(a) in good-faith;</p> <p>(b) proportionate to the harm that may be inflicted by the commission of the offence alleged to have been committed;</p> <p>(c) only where all other means of achieving the objectives of this Act as specified in the Act have proved ineffective; and</p> <p>(d) only to the extent such measures may be necessary, to prevent the commission of an offence under this Act or for the purpose of apprehending persons who have committed offences under this Act.</p> <p>(3) Any such officer shall not use excessive force except in the exercise of private defence within the meaning of the Penal Code.</p>	<p>range of powers to the armed forces under the proposed ATA.</p>
<p>Specialized Anti-Terrorism Agency of the Sri Lanka Police</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 49 – Specialized Anti- Terrorism Agency of the Sri Lanka Police</p> <p>(1) The Inspector General of Police shall name and establish a Specialized Anti-Terrorism Agency of the Sri Lanka Police, which shall be assigned with the responsibility of preventing and countering terrorism and investigating the commission of any offence under this Act (hereinafter referred to as the “Specialized Agency”).</p> <p>(2) Notwithstanding the provisions of subsection (1) the Inspector General of Police shall be entitled to assign any investigation or any partly conducted investigation, into the commission of an offence under this Act, to any other division or unit or to any police station, of the Sri Lanka Police.</p>	<p>The Sri Lanka Police at present already has a counter-terrorist unit known as the Terrorist Investigation Division (TID). Numerous allegations have surfaced against the TID in relation to abductions, torture and extrajudicial killings of suspects. In such a context, there are concerns with regard to the need and necessity to establish yet again, a specialized agency for counter-terrorism measures.</p>

		<p>(3) It shall be the duty of the Specialized Agency, to–</p> <ul style="list-style-type: none"> (a) maintain the central database; (b) maintain statistics relating to the commission of offences under this Act; (c) conduct investigations to arrest, and proceedings relating thereto in respect of persons who commit offences under this Act; (d) assess threat situations posed by terrorism, and issue warnings to the general public; and (e) conduct research into terrorism, and develop investigation techniques and strategies, best practices and standards. 	
<p>Appointment of special teams of Investigators.</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 50 – Appointment of special teams of Investigators.</p> <p>(1) Where any offence under this Act is committed or upon receipt of an information of the commission of, or preparation to commit an offence under this Act, the Inspector General of Police may appoint a special team of investigators (hereinafter referred to as the “Investigation Team”) comprising of the following persons, to investigate into such offence, or to take necessary measures to prevent the same:-</p> <ul style="list-style-type: none"> (a) a police officer designated by name and rank who shall be the Head of the Investigation Team; (b) such number of other police officers designated by name and rank who shall be the criminal 	<p>The appointment of a multidisciplinary investigation team is welcome as it could ensure the effective and speedy conclusion of the investigation. This could also safeguard the interest of the suspects as the team consists of forensic psychologists, medical specialists and legal experts.</p> <p>However, the use of the term “Peace Officers” under Sub-Clause 50(3), for what is essentially intended to be an investigative team, is a key point of concern.</p>

		<p>investigators;</p> <p>(c) such number of legal experts;</p> <p>(d) such number of crime inspection officers;</p> <p>(e) such number of forensic medical specialists;</p> <p>(f) such number of forensic psychologists;</p> <p>(g) such number of forensic scientists, including scientists in serology, genetics, ballistics, explosives and chemicals;</p> <p>(h) such number of finger print experts;</p> <p>(i) such number of experts in handwriting and suspected documents;</p> <p>(j) such number of computer and automated network experts;</p> <p>(k) such number of forensic auditors;</p> <p>(l) such number of experts in analogy, digital technology and mobile and satellite communication technology;</p> <p>(m) such number of photographers and videographers; and</p> <p>(n) such number of other experts, that the Inspector General of Police may deem necessary.</p> <p>(2)</p> <p>(a) The Inspector General of Police shall designate a police station to the Investigation Team constituted under subsection (1).</p> <p>(b) The officer in charge of such police station shall, in addition to performing the general duties and functions assigned to such officer under this Act and other written law, assist the Investigation Team.</p>	<p>Further, with regard to such an “Investigation Team”, there are several critical questions:</p> <p>(1) who do they report to?</p> <p>(2) what oversight?</p> <p>Considering how some teams have been used to target and surveillance certain individuals and groups in the past, under the guise of national security, it is crucial to have safeguards to prevent abuse.</p>
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		(3) The members of the Investigation Team who are not police officers shall be deemed to be Peace Officers for the purpose of performing the functions assigned to such Investigation Team.	
Constitution of support teams	No equivalent provision in the PTA.	<p>Clause 51 – Constitution of support teams</p> <p>(1) Police officer not below the rank of a Deputy Inspector General of Police who is a member of an Investigation Team may with the concurrence of relevant authorities constitute support teams comprising of members of any armed force, doctors and other healthcare workers, emergency relief service providers, public servants and other necessary persons, to attend the following duties at any scene of crime where an offence under this Act has been committed-</p> <ul style="list-style-type: none"> (a) to rescue and evacuate victims of any offence and other persons from the scene of crime; (b) to provide emergency medical treatments; (c) to recover dead bodies; (d) to douse fires; (e) to deactivate explosives and other lethal and dangerous substances; (f) to carry out controlled explosions, in order to deactivate lethal and dangerous substances; (g) to remove debris; (h) to create access routes; and (i) to provide other emergency, humanitarian and security requirements and services. 	<p>The provision provides for speedy response to humanitarian and security requirements without the requirement to wait for the authorities and first responders in emergency situations.</p> <p>There are serious concerns as to why an anti-terror law is used to address emergency and humanitarian relief. In the context of humanitarian / disaster emergencies, Clause 51 could be abused to expand the power of the executive. In any event requiring emergency relief, there are existing structures such as Public Security Ordinance and the Disaster Management Act that provides for essential services.</p>

		(2) It shall be the duty of every person whose assistance has been sought under subsection (1), to provide such assistance, as may be required.	
Powers to facilitate investigations	<p>Section 08- Recording of statements by Magistrate</p> <p>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.</p>	<p>Clause 52 – Powers to facilitate investigations</p> <p>(1) For the purposes of this Act, a police officer not below the rank of a Sub-Inspector of police who has been authorized in writing by an officer in charge of a police station to conduct an investigation in terms of this Act, shall be empowered to require any person who has been suspected of committing an offence under this Act or whose presence or assistance is required to conduct such investigation to–</p> <ul style="list-style-type: none"> (a) be present for an interview; (b) answer questions put to him; (c) provide information; (d) give statements; (e) give statements on affidavit or oath: <p>Provided that, a statement on affidavit or oath shall only be obtained on an order of a Magistrate;</p> <ul style="list-style-type: none"> (f) tender any document or thing that may be in the possession or control of such person; (g) assist in conducting of an investigation; (h) where the person is suspected for committing an offence under this Act, make himself available for a physical examination having due regard to gender sensitivity and privacy of the person; and (i) make himself available for taking of photographs, video recording and taking finger, 	<p>The ATA introduces important safeguards during the stage of the investigation, by providing access to legal counselling and audio-visually recording the interview. This is a significant improvement from the PTA.</p> <p>The proposed ATA in a positive move, takes the necessary safeguards to prevent the coercing of suspects in order to obtain statements implicating or incriminating himself in the commission of an offence. This Clause specifies that a statement on affidavit or oath can only be obtained on orders of the Magistrate and that no person is bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p>

		<p>palm or foot prints where the person is suspected for committing an offence under this Act.</p> <p>(2) No person shall be bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p> <p>(3) Any person who is to be interviewed and whose statement is to be recorded, shall-</p> <p>(a) be informed of his right to have access to an Attorney-at-Law of his choice to obtain legal advice prior to such interview; and</p> <p>(b) be interviewed and the statement be recorded in a language understood by such person, and the services of an interpreter be obtained where necessary:</p> <p>Provided that, where the services of an interpreter are obtained, the interview shall be recorded with its translation, and be transcribed, and preserved, for future verification.</p> <p>(4) A police officer acting under the provisions of this section shall inform the person prior to being interviewed, of his rights under this Act.</p> <p>(5) Wherever possible, the interview shall be audio visually recorded.</p>	
<p>Use of force to stop a vessel or vehicle</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 53 – Use of force to stop a vessel or vehicle</p> <p>Where the person in charge of any vehicle, vessel, train or aircraft disobeys any order given by a</p>	<p>The force used should be proportionate and used only if strictly necessary and only to the extent required by the circumstances.</p>

		<p>police officer or any other person acting on his demand for halting any such vehicle, vessel, train or aircraft for the purposes of this Act, such police officer or the person may use such force as may be necessary to halt such vehicle:</p> <p>Provided however, any such force may be used only where all other means of halting the vehicle, vessel, train or aircraft have proved ineffective: Provided further, any such officer shall not use excessive force except in the exercise of private defence within the meaning of the Penal Code.</p>	<p>Additionally, police officers should minimise damage and injury and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment. And further promptly report the death or injury resulting in the use of force to the Magistrate and the superiors of the police.</p>
Taking over the control of any vehicle, vessel	No equivalent provision in the PTA.	<p>Clause 54 –Taking over the control of any vehicle, vessel etc.</p> <p>(1) A police officer shall be entitled to take over the control of any vehicle, vessel, train, aircraft or unmanned aerial vehicle, for the purpose of conducting an investigation under this Act or for preventing the commission of an offence.</p> <p>(2) Such taking of control shall be promptly reported to a Magistrate.</p>	<p>Measures should be taken to use this Clause only in instances where it is absolutely necessary and proportionate to the circumstances. Further, it is crucial to ensure that the Magistrate is promptly informed as provided in Clause 54(2). Such prompt reporting is an important safeguard against abuse.</p>
Suspension or delaying the taking off or sailing of vessel, aircraft	No equivalent provision in the PTA.	<p>Clause 55- Suspension or delaying the taking off or sailing of vessel, aircraft, etc.</p>	<p>These actions should be taken only in instances where it is absolutely necessary and proportionate to the circumstances.</p>

		<p>(1) For the purposes of this Act, a police officer not below the rank of a Deputy Inspector General of Police may issue directions to –</p> <p>(a) suspend or delay, the taking off of any aircraft, or the sailing of any vessel, for a period not exceeding forty- eight hours;</p> <p>(b) land any such aircraft at a designated airport or at any other appropriate location; or</p> <p>(c) bring any vessel to any port or harbour or any other appropriate location.</p> <p>Provided however, no directive under paragraphs (a), (b) or (c) shall be issued, without prior approval obtained from the Magistrate having jurisdiction in the area within which such aircraft or vessel is located.</p> <p>Provided further, the officer issuing the direction shall, prior to the issuance of such directive satisfy himself of the necessity for issuing the same and shall issue such directive subject to such conditions, if any, as may be specified in the approval granted by the Magistrate</p> <p>(2) The Director General of Civil Aviation appointed under the Civil Aviation Authority Act, No.34 of 2002, and the Commander of the Sri Lanka Air Force shall be prior informed of any such direction issued in respect of any aircraft for the purpose of obtaining air-defence clearance.</p> <p>(3) Where the direction is issued in respect of a vessel of the Sri Lanka Navy, the Commander of</p>	<p>It is noteworthy that, in the September version of the ATA, the suspension or delay is restricted to a period not exceeding forty-eight hours. Further, two provisos are added restricting the issuance of directives under Clause 55(1)(a), (b) and (c) by ensuring approval from the Magistrate.</p>
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		the Sri Lanka Navy shall be given prior notice of such direction.	
OIC to call for a forensic medical examination	No equivalent provision in the PTA.	<p>Clause 56 – Clinical forensic medical examinations</p> <p>(1) An officer in charge of a police station shall be entitled to directly submit a suspect in custody or a victim of an offence to a Judicial Medical Officer for examination.</p> <p>(2) The report of the examination shall be directly submitted by the Judicial Medical Officer, to the relevant officer in charge of the police station, with a copy to the Magistrate before whom the suspect has been, or is to be produced.</p>	This is an improvement from the existing PTA. However, if the suspect raises concerns regarding the outcome of the medical examination or the Magistrate has a reasonable suspicion with regard to the results of such medical examination, provision should be made to produce the suspect before an independent medical specialist for such examination.
OIC to submit items to the Government Analyst/other expert	No equivalent provision in the PTA.	<p>Clause 57 – Directly submitting items to Government Analyst or other expert.</p> <p>(1) An officer in charge of a police station shall be entitled to directly, submit any document, thing or article, which he reasonably believes to be connected with the commission of an offence under this Act, to the Government Analyst or to any other local or foreign expert for examination and analysis.</p> <p>(2) The report of the examination shall be directly submitted by the Government Analyst or other expert, to the officer in charge of the relevant police station with a copy to the Magistrate before whom the suspect has been, or is to be produced.</p>	A copy of the Report of the examination should also be served to the Magistrate in order to ensure the impartiality of the process and prevent any tampering with evidence.

<p>Transfer of Material for Investigation.</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 58 – Transfer of Material for Investigation.</p> <p>(1) It shall be lawful for a police officer who conducts an investigation in respect an offence under this Act to submit material for investigation to any other law enforcement agency, if he is of the view that, there exists material indicative of that offence, falling under the purview of the investigation competency of such other law enforcement agency has been committed.</p> <p>(2) The law enforcement agency referred to in subsection (1), may include an agency of any other sovereign country.</p>	<p>Provisions should be made to submit a report to the Magistrate, containing the items/materials so transferred to other law enforcement agencies.</p> <p>There should be a log/database in the police as well as the other law enforcement agencies with regards to the materials which are in the process of being investigated to prevent the loss/tampering of evidence.</p>
<p>Investigations outside Sri Lanka</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 59- Investigations outside Sri Lanka</p> <p>(1) It shall be lawful for a police officer with the approval of the Inspector General of police, and with the prior approval obtained from the relevant foreign country to conduct an investigation in terms of this Act outside Sri Lanka.</p> <p>(2) It shall be lawful for a police officer authorized by the Inspector General of Police, with the prior approval obtained from the relevant foreign country and the Government of Sri Lanka, to undertake and carry out a joint investigation into the commission of an offence under this Act, with a criminal investigation agency of any other country.</p>	<p>This Clause contains broad and far-reaching powers granted to a police officer of unspecified rank, merely on the approval by the IGP to conduct investigations, that may result in the violation of fundamental rights guaranteed under the constitution if abused.</p> <p>Certain additional safeguards should be placed upon this Clause such as requiring the prior approval of a Magistrate and requiring reports of the investigation to be submitted to court.</p>

<p>Police to issue directives for the protection of the public.</p>	<p>No equivalent provision in the PTA.</p>	<p>Clause 60- Police may issue directives for the protection of the public.</p> <p>(1) Where a police officer not below the rank of a Senior Superintendent of Police receives reliable information that an offence under this Act is committed or is likely to be committed, he may issue any one or more of the following directives to the public, if he is of the opinion that there is a clear and present danger, and that such directive is necessary for the purpose of protecting persons from harm or further harm, associated with such offence: -</p> <ul style="list-style-type: none"> (a) not to enter any specified area or premises; (b) to leave a specified area or premises; (c) not to leave a specified area or premises and to remain within such area or premises; (d) not to travel on any road; (e) not to transport anything or to provide transport to anybody; (f) to suspend the operation of a specified public transport system; (g) to remove a particular object, vehicle, vessel or aircraft from any location; (h) to require that a vehicle, vessel, ship or aircraft to remain in its present position; (i) not to sail a vessel or ship into a specified area until further notice is issued; (j) not to fly an aircraft out of, or into a specified air space; (k) not to congregate at any particular location; (l) not to hold a particular meeting, rally or procession; and (m) not to engage in any specified activity: 	<p>This Clause contains very broad and far-reaching powers granted to a police officer not below the rank of Senior Superintendent of police that may result in the violation of fundamental rights guaranteed under the constitution if abused.</p> <p>However certain safeguards are placed upon Sub-Clauses (a) to (m) by requiring the prior approval of the Magistrate.</p> <p>The over-broad powers granted to a police officer under this Clause encroach on the fundamental rights guaranteed under the following Articles of the Constitution:</p> <p>14(1)(b) – the freedom of peaceful assembly;</p> <p>14(1)(c) - the freedom of association;</p> <p>14(1)(h) - the freedom of movement and of choosing his residence within Sri Lanka;</p> <p>Further, there is no judicial oversight in deciding the period of operation of the directives. There is no requirement for the police officer to obtain the approval of the Magistrate when extending the period of the directive under sub-Clause (5).</p>
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		<p>Provided however, no directive under paragraphs (a) to (m) shall be issued, without the prior approval obtained from a Magistrate, who shall prior to the issuance of such directive satisfy himself of the necessity for issuing the same and may make an order to issue such directive subject to such conditions.</p> <p>(2) The Human Rights Commission of Sri Lanka shall forthwith be informed of any directive issued under this section by the relevant officer who issued such directive or the Magistrate who granted prior approval for any such directive under paragraphs (a) to (m).</p> <p>(3) Any such directive, may include exceptions to such directive, in order to meet with emergency situations and humanitarian requirements of persons that may be affected by any such directive.</p> <p>(4) Any such directive, shall be published in the Gazette and be given a wide publicity in the relevant area through others appropriate other means.</p> <p>(5)</p> <p>(a) The period of operation of any such directive shall not exceed, continuously for more than twenty-four hours at a time, and for a total period of more than seventy-two hours.</p> <p>(b) Where the period of operation of any such directive is required to be extended for more than twenty-four hours, such extended period shall commence after an interval of not less than</p>	<p>Moreover, sub-Clause (6) also permits the armed forces to be involved in order to give effect to the directives, which raises serious concerns with regards to the possibility of violation of fundamental rights guaranteed by the Constitution.</p>
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		<p>twenty-four hours, after the expiration of the initial period of operation of the directive.</p> <p>(6) The assistance of the members of any armed force may be obtained by the Inspector General of Police, with the prior approval obtained from the Commander of the relevant armed force, to give effect to any directive under this section.</p> <p>(7) For the purpose of giving effect to such directive, it shall be lawful for the police officers to cordon-off such area.</p> <p>(8) During the period of operation of such directive and during a twenty-four hours interval between two periods of operation, it shall be lawful for any police officer or a member of any armed force authorized in that behalf -</p> <p>(a) to stop, question and search any person found within the area within which such directive is effective;</p> <p>(b) to enter and search any premises; or</p> <p>(c) to stop any person who may attempt to enter into or, remain in the effective area of such directive and question and search such person or his belongings and property that may be taken in, or out of such area.</p> <p>(9) Any search conducted in terms of this section shall be carried out in a gender sensitive manner, with due respect to the dignity and privacy of the person being searched, and while ensuring that the search of a female shall only be carried out by a female officer.</p>	
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		<p>(10) It shall also be lawful for a police officer or a member of the armed forces authorized in that behalf to restrain and search any person who may act contrary to the directive.</p> <p>(11) Any person, who wilfully acts contrary to a directive issued under this section, commits an offence, and shall upon conviction by a Magistrate be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five thousand rupees or to both such imprisonment and fine.</p> <p>(12) An offence under this section shall be deemed to be a non-cognizable offence within the meaning of the Code of Criminal Procedure Act, if the commission of such offence does not endanger the life of any person other than the offender.</p>	
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PART V – MATERIAL FOR INVESTIGATION

<p>Obtaining information from Banks and Financial Institutions etc.</p>	<p>No corresponding Section In the PTA.</p>	<p>Clause 61 – Obtaining information from banks, financial institutions etc</p> <p>(1) The officer in charge of the relevant police station shall be entitled to apply for an order from a Magistrate to require any bank, non-banking financial institution or designated non-finance business to provide following information and material to such officer, subject to the provisions of the Convention on the Suppression of Terrorist Financing Act, No.25 of 2005, Prevention of Money Laundering Act, No.5 of 2006 and the Financial Transactions Reporting Act, No. 6 of 2006 :</p> <ul style="list-style-type: none"> (a) information relating to any financial service provided by such bank, institution or business, to any person; (b) details of any financial transaction carried out by any person; (c) details relating to bank accounts, deposits, remittances, and withdrawals and financial services provided by any such bank, institution or business; (d) details relating to securing of financial services by any person; (e) a certified statement of any account or other information pertaining to any account or transaction. <p>Provided however, such police officer shall be entitled to apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of an offence under this Act.</p>	<p>The categories of information which can be sought are broad, and this section may result in the violation of the privacy of persons and their financial details.</p> <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 65, there are no guidelines upon which the Magistrate may consider if the information is necessary in the conducting of an investigation and if the request has been made in good faith. This Clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> <p>It is notable that the September version of the ATA has included Article 106 of the Constitution to Clause 61(3).</p>
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		<p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of subsection (1), where it appears reasonable and necessary for conducting investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i>, if requested by such police officer, subject to Article 106 of the Constitution.</p>	
<p>Obtaining information from service providers</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 62 – Obtaining information from service providers</p> <p>(1) The officer in charge of the relevant police station shall be entitled to apply for an order from a Magistrate to require any telecommunication, satellite or digital service or data service provider, to provide information, including –</p> <ul style="list-style-type: none"> (a) information pertaining to services provided or being provided by such service provider to any person; (b) information pertaining to services enjoyed by any person to whom such services have been made available; (c) any information, data or document or record that may be stored, archived or otherwise kept, by such service provider; and (d) information pertaining to the uploading or downloading of data or information, to or from any instrument through the service provided by such service provider. <p>Provided however, such police officer shall be entitled to apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of an offence under Act.</p>	<p>The categories of information which can be sought are broad, and this Clause may result in the violation of the privacy of persons.</p> <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 65, there are no guidelines upon which the Magistrate may consider if the information is necessary for the conducting of an investigation and if the request has been made in good faith. This Clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> <p>It is notable that the September version of the ATA has included Article 106 of the Constitution to Clause 62(3).</p>

		<p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of subsection (1), where it appears reasonable and necessary for conducting investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i> subject to Article 106 of the Constitution if requested by such police officer.</p>	
<p>Obtaining information from government or statutory institutions</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 63- Obtaining information from Government or statutory institutions.</p> <p>(1) The officer in charge of a police station shall be entitled to apply for an order from a Magistrate to require from the following officers any information or document for the purpose of conducting an investigation on an offence under this Act :-</p> <ul style="list-style-type: none"> (a) the Secretary to any Ministry of a Minister; (b) Secretary General of the Parliament of Sri Lanka; (c) Commissioner General of Inland Revenue; (d) Governor of the Central Bank; (e) Head of the Department of Foreign Exchange; (f) Director of the Financial Intelligence Unit; (g) Director General of the Securities and Exchange Commission of Sri Lanka; (h) Director General of Customs; (i) Controller-General of Immigration and Emigration; (j) Commissioner General for the Registration of Persons; (k) Controller General of Imports and Exports; (l) Registrar of Companies; (m) Commissioner General of Land; (n) Director General of the Intellectual Property of Sri 	<p>The categories of information which can be sought is vast, and this Clause may result in the violation of the privacy of persons.</p> <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 66, there are no guidelines upon which the Magistrate may consider if information is necessary in the conducting of an investigation and if the request has been made in good faith. This Clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organizations.</p> <p>It is notable that the September version of the ATA has included Article 106 of the Constitution to Clause 63(3).</p>

		<p>Lanka;</p> <p>(o) the Registrar - General</p> <p>(p) Commissioner General of Motor Traffic;</p> <p>(q) Director General of Telecommunications;</p> <p>(r) a Head of any Government department, statutory body or other Government institution; or</p> <p>(s) Chairman of a Provincial Council or a Chairman or a Special Commissioner of a local authority.</p> <p>(2) Such Magistrate shall consider the application made by such police officer, and make an order in terms of subsection (1), where it appears reasonable and necessary for conducting an investigation.</p> <p>(3) The Magistrate shall maintain confidentiality in respect of the application and the proceedings pertaining to the same shall be held <i>in-camera</i> if requested by such police officer, subject to Article 106 of the Constitution.</p>	
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PART VI – MAGISTRATE TO MAKE ORDERS TO FACILITATE INVESTIGATIONS

<p>Magistrate making orders on the application of the Police for the facilitation of an investigation</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 64 – Magistrates to make orders on application of an officer in charge of a police station</p> <p>(1) An officer in charge of a police station may for the purpose of conducting an investigation of an offence under this Act, make an application to a Magistrate for making orders to facilitate such investigation including -</p> <ul style="list-style-type: none"> (a) restraining a suspect from travelling outside Sri Lanka; (b) by taking of blood, hair samples, swab and biometrics including the finger impression of a person; (c) by conducting of identification parades; (d) forwarding productions to the government analyst, any other local or foreign expert or to a government forensic medical specialist; (e) conducting of examinations and tests by experts; (f) freezing of bank accounts or freezing of other financial deposits and accounts, subject to any condition that may be imposed: Provided that, the Magistrate may on his own motion or on an application made in that behalf, vary such order, or permit the use in good faith of the funds in such accounts by the holder of any such account, for any legitimate purpose; (g) suspending or varying the provision of services being provided by any service provider: Provided that, the Magistrate may either on his own motion or on an application made in that behalf, vary such order, enabling the use in good faith of such services by the recipient of any such service, for any legitimate purpose; and (h) opening of safe boxes. 	<p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>Unlike in the case of Clause 66, there are no guidelines upon which the Magistrate may consider if the information is necessary in the conducting of an investigation. This Clause may thus be exploited in a manner that is invasive of the right to privacy of citizens and organisations.</p> <p>Sub Clauses (f) and (g) may be exploited to victimise citizens, organisations and media institutions.</p> <p>There is no requirement that such a person should be heard before making such an order, thus violating the liberties of such persons.</p> <p>Further, in terms of a travel ban, the CTA had a requirement that a copy of the travel ban be forthwith served on the suspect. This requirement has been omitted under the ATA.</p>
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		(2) The Magistrate shall, upon being satisfied that the application is made in good faith and the assistance sought is reasonably necessary for the purpose of facilitating the conduct of investigations, make the order sought under subsection (1).	
Magistrates to authorise unlocking date and information	No equivalent provision in the PTA.	<p>Clause 65 – Magistrates to authorize unlocking date and information</p> <p>(1) For the purposes referred to in subsection (2), a police officer not below the rank of a Superintendent of Police may make an application to a Magistrate seeking for an order authorizing such officer–</p> <p>(a) to direct any person who provides locking or encryption services pertaining to any communication or storage services or equipment of any data or information or other thing, to unlock or unencrypt the service or equipment and provide information contained therein to such police officer;</p> <p>(b) to intercept, read, listen or record any postal message or electronic mail or any telephone, voice, internet, or video conversation, or conference or any communication through any other medium;</p> <p>(c) to access any analogue or digital data or information; exchange or transfer system.</p> <p>Provided however, such police officer shall be entitled to apply for an order under this section only if there exist reasonable grounds of suspicion against any person in the commission of an offence under this Act.</p> <p>(2) The purposes for which the Magistrate may make an Order under subsection (1) shall be –</p>	<p>There is concern that this Clause may be used to create a context of State surveillance on its citizens, and as such it is necessary that such orders are very specific, and do not provide wide powers to the police for the surveillance of persons or a part of the population.</p> <p>There is no specification as to the territorial jurisdiction of the Magistrate who can grant this order, and this may be exploited.</p> <p>The limited circumstances in Sub-Clause (2) in which such orders can be made is a positive step, and the police should be required to demonstrate why information falls within these categories.</p> <p>Similar criteria should be made present in the previous Clauses under which the police are requesting an order from a Magistrate to access a person's personal data.</p>

		<p>(a) to determine the identity of a person who has committed;</p> <p>(b) to determine the location of a person who has committed;</p> <p>(c) to facilitate the conduct of an investigation into;</p> <p>(d) to gather evidence against a person who has committed;</p> <p>(e) to determine whether one or more persons are conspiring, planning, preparing or attempting to commit; or</p> <p>(f) to take measures to prevent the commission of,</p> <p>an offence under this Act.</p> <p>(3) Such Magistrate shall, if he is satisfied that the application is made in good faith and making of such order is reasonably necessary for conducting investigations, issue such order.</p>	
<p>Magistrate recording statements</p>	<p>Section 8 – Recording of Statement by Magistrate</p> <p>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.</p>	<p>Clause 66 – Magistrates to Record Statements</p> <p>(1) On an application made by an officer in charge of a police station conducting an investigation into an offence under this Act, the Magistrate to whom such application is made, may question and record the statement of any suspect, who is produced by such officer before the Magistrate.</p> <p>(2) The recording of such statement, shall be in compliance with the following conditions: -</p> <p>(a) the person shall be informed of his rights under this Act;</p> <p>(b) the person shall be inquired in order to ascertain whether such person wishes to voluntarily answer the questions put to him, and the Magistrate shall proceed to record a statement, only if he is satisfied that such person is</p>	<p>The PTA permits the Magistrate to record the statement of any person ‘conversant with any facts relating to the commission of any offence under the Act’. The added protections in the ATA are an improvement from the PTA. However, two requirements which were in the CTA, namely the person being given access to or the right to communicate with an Attorney-at-Law, and the person being informed that they have no obligation to answer the questions put before them have been omitted from the ATA.</p> <p>There is no requirement in the proposed ATA that the statement should be made</p>

		<p>voluntarily making such statement, without any promise, inducement or threat;</p> <p>(c) a questionnaire shall be obtained from the officer in charge of the police station for the purpose of questioning such person;</p> <p>(d) the person shall be warned that in the event of criminal proceedings being instituted against him, the contents of the statement that he will make, may be used as evidence against him;</p> <p>(e) whatever statement such person wishes to give shall be recorded, in addition to answers given to the questions put to him;</p> <p>(f) in situations where the person being interviewed, does not understand the language spoken by the Magistrate, the services of an interpreter shall be obtained, in order to translate the questions and the answers into the languages understood by such person and the Magistrate;</p> <p>(g) a transcript of the interview and a video recording thereof shall be prepared and retained for future verification.</p> <p>(3) Where the person who makes such statement is subsequently indicted for having committed an offence under this Act, such statement shall, subject to the provisions specified in subsection (2) of section 78 and to the provisions of section 24 of the Evidence Ordinance, be admissible in evidence against such person at proceeding in respect of such offence.</p> <p>(4) Where the person who makes such statement is called by the Attorney General as a witness to testify against a person who is indicted for having committed an offence under this Act, either the entirety of the statement or a part thereof, may</p>	<p>under oath, though as per Sub-Clause (3) the statement may be admissible in court.</p> <p>Further, there is a notable lacuna in the proposed ATA in that it does not specify that the police officer should not be present within hearing range when the statement is being recorded.</p>
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		<p>be marked and produced in evidence, as part and parcel of the examination-in-chief of such person.</p> <p>(5) (a) When the suspect declines to make a statement to the Magistrate, such fact shall be communicated by the Magistrate to the relevant police officer.</p> <p>(b) if at any time the suspect so declines to make a statement, he is in detention in terms of a detention order or, is in remand custody, he shall be returned to detention or remand custody, as the case may be.</p>	
<p>What happens on the completion of the investigation</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 67 – Completion of Investigations</p> <p>(1) When the investigation is completed, the officer in charge of the relevant police station shall submit to the Magistrate, a report notifying the completion of investigations.</p> <p>(2) A Detention Order under this act shall not be issued or extended in respect of a suspect in respect of whom the investigation has been completed.</p> <p>(3) If at any time, an investigation in respect of any person arrested under this Act, is to resume, the Magistrate and the Human Rights Commission of Sri Lanka shall be informed of such resumption and the completion of further investigation.</p>	<p>This provision is an improvement from the PTA. The involvement of the Magistrate and the Human Rights Commission are important safeguards in the course of investigations. Sub-Clause (2) ensures that there are no Detention Orders extended in respect of a person after the investigation has been completed, and Sub-Clause (3) requires that if an investigation resumes, then the Magistrate and Human Rights Commission should be informed of this fact.</p> <p>However, ideally, investigations should only resume on the police obtaining permission to do so from a Magistrate, upon there being good reason for the same. This would be an added protection to ensure that investigations are not resumed for the purpose of harassing a suspect.</p>

<p>Notes on Investigations Submitted to the AG</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 68 – Notes of Investigations to be Submitted to the Attorney General</p> <p>The provisions of the Code of Criminal procedure Act shall mutatis mutandis apply in respect of submission of notes of investigation to the Attorney General, upon completion of the investigations.</p>	<p>It is apparent that the standard of “adequate evidence” is vaguely and broadly used here, and could result in proceedings being prompted by the police to further abuse and targeting of individuals.</p> <p>In the present version of the proposed ATA it is underpinned that the Code of Criminal Procedure Act shall apply in submitting notes.</p>
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PART VII- INSTITUTION OF CRIMINAL ACTION

<p>Institution of criminal proceedings</p>	<p>As per section 15 of the PTA criminal proceedings commences upon an indictment being received by the High Court</p>	<p>Clause 69 - Attorney General to institute proceedings</p> <p>The Attorney General may indict and institute, undertake or carry-on criminal proceedings in respect of an offence committed under this Act and an offence committed by such person under any other law in the course of committing such offence under this Act.</p>	<p>Similar to the PTA, the power to institute proceedings under the proposed ATA is vested with the Attorney General.</p> <p>In the March version of the Proposed ATA, it read that the Attorney General “shall” institute proceedings, suggesting it was mandatory. The use of “may” gives the Attorney General some discretion.</p>
<p>Suspension and deferment of indictment</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 70 - Suspension and deferment of indictment</p> <p>(1) Notwithstanding anything to the contrary in any other written law, where –</p> <p>(a) death or grievous hurt has not been caused to any person; or</p> <p>(b) the security of the State and the people of Sri Lanka has not been seriously compromised or affected, the Attorney General may, having due regard to the facts specified in subsection (2), and subject to one or more conditions referred to in subsection (3), suspend and defer the institution of criminal proceedings against such person alleged to have committed an offence under this Act, for a period not exceeding twenty years.</p>	<p>ATA introduces a Clause that gives power to the Attorney General to suspend and defer the institution of criminal proceedings against a person alleged to have committed an offence under the ATA.</p> <p>This provision is an improvement. However, given the recent allegations that have come to light regarding the Attorney General’s Department and its role, both as the legal advisor to the State and the chief prosecuting officer, concerns remain if the decision of suspension and deferment would be independent and without undue influence. Therefore, measures should be taken to ensure that this provision is not abused and used cautiously.</p>

(2) Where the Attorney General suspends and defers the institution of criminal proceedings under subsection (1), he shall pay due regard to-

- (a) the State policy;
- (b) the national interest and public interest;
- (c) views of the Inspector General of Police;
- (d) views of the victims of the offence; and
- (e) the representations that may be made by the accused person or, on his behalf by his Attorney-at-Law.

(3) Where the Attorney General decides in terms of subsection (1) to suspend and defer the institution of criminal proceedings against any person alleged to have committed an offence under this Act, he shall prefer an application to the High Court, to obtain the sanction of such Court to the imposition of one or more of the following conditions on such person as consideration for the suspension and deferment of the institution of criminal proceedings against such person:-

- (a) to publicly express remorse and apology before the High Court, using a text issued by the Attorney General as instructed by the Court;
- (b) to provide reparation to victims of the offence, as specified by the Attorney General;

		<p>(c) to participate in a specified programme of rehabilitation;</p> <p>(d) to publicly undertake that such person refrains from committing an offence under this Act;</p> <p>(e) to engage in specified community or social service; or</p> <p>(f) to refrain from, committing any indictable offence or, breach of peace.</p> <p>(4) The High Court shall, upon consideration of the application made by the Attorney General under subsection (3), order the person alleged to have committed the offence to appear before the Court, and shall notify such person of the conditions imposed by the Court and be afforded an opportunity to be heard and consent to the conditions so imposed by the Court.</p> <p>(5) If such person fulfils the conditions imposed under subsection (4) during the period stipulated for fulfilling such conditions, the Attorney General shall not institute criminal proceedings against such person in respect of the offence alleged to have been committed.</p> <p>(6) If the person fails without valid excuse to comply with such conditions, the Attorney General may with notice to the suspect, institute criminal proceedings against such person after the lapse of the period given to the suspect to fulfil such conditions.</p>	
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PART VIII- TRIAL

<p>Trial in the High Court</p>	<p>Section 15</p>	<p>Clause 71 - Trial in the High Court</p>	<p>Similar to the PTA, a person who commits an offence under the proposed ATA and the previously proposed CTA can be prosecuted without a preliminary inquiry. This can be done on indictment by the Attorney General before a Judge of the High Court.</p>
	<p>(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 the 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 judgments, sentences and orders pronounced at any such trial held by the High Court at Bar.</p>	<p>Every person who commits an offence under this Act shall be triable without a preliminary inquiry, on indictment by the Attorney General, before a Judge of the High Court, sitting without a jury:</p> <p>Provided however, the Chief Justice may direct that the trial shall be held before the High Court at Bar, in terms of the provisions of the Code of Criminal Procedure Act, where-</p> <p>(a) the Attorney General so requests the Chief Justice;</p> <p>(b) the Chief Justice is of the opinion that the interests of Justice so demand; or</p> <p>(c) the accused or an Attorney-at-Law on his behalf so applies.</p>	<p>Unlike in the PTA and the previously proposed CTA, the Secretary to the Ministry is empowered to keep an individual accused under the ATA in custody. While the ATA states that this should be done in conformity with the interest of national security and public</p>
<p>(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</p>	<p>Clause 72 – Detention until conclusion of trial</p>	<p>(1) Notwithstanding any other provision of this Act or any other written law, the Secretary to the</p>	

		<p>Ministry of the Minister assigned the subject of Defence may,</p> <p>(a) if he is of opinion that it is necessary or expedient that a person be kept in the custody of any authority, in the interest of national security and public order; and</p> <p>(b) subject to such directions as may be given by the High Court to ensure a fair trial of such person, make order, that such person be kept in custody of any authority, in such place, subject to such conditions as may be determined by the High Court having regard to such interests.</p> <p>(2) Any order made under subsection (1) shall be communicated to the High Court and to the Commissioner General of Prisons and it shall be the duty of such Commissioner General, to deliver the custody of such person to the authority specified in such order and the provisions of the Prisons Ordinance (Chapter 54) shall cease to apply in relation to the custody of such person.</p>	<p>order, the scope of the terminology remains ambiguous and has the potential to be abused. Further, Clause 72(2) only provides for the mere communication to the High Court. This broadens powers to the executive arm with little to no substantial scope for judiciary involvement.</p>
<p>Priority for Trials</p>	<p>Section 21</p> <p>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.</p>	<p>Clause 73 – Proceedings in respect of offences under this Act to be given priority</p> <p>The proceedings in respect of offences under this Act shall be given priority over any other business of the court unless in the opinion of the court, special circumstances of urgency in such other business prevents.</p>	<p>This provision is an improvement from the PTA. This ensures the conclusion of the trial without unnecessary delays.</p>

<p>Withdrawing indictment</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 75 - Withdrawal of Indictment</p> <p>(1) If at any time before the judgement is given by the High Court against a person who has been indicted for having committed one or more offences under this Act, where any charge in the indictment does not relate to-</p> <p>(a) causing death or grievous bodily injury to any person;</p> <p>(b) endangering the security of the State and the people of Sri Lanka; or</p> <p>(c) causing serious harm to property,</p> <p>the Attorney General may, having due regard to the facts specified in subsection (2) and subject to one or more conditions referred to in subsection (3) with the permission of the High Court, withdraw the indictment against the accused.</p> <p>(2) When the Attorney General withdraws the indictment under subsection (1), he shall pay due regard to the views of the victims of the offence and the representations that may be made by the accused person or on his behalf by his Attorney-at-Law.</p> <p>(3) The Attorney General may impose one or more of the following conditions as specified in subsection (1):-</p>	<p>The proposed ATA introduces a Clause that provides power to the Attorney General to withdraw the indictment against the accused, subject to the views of the victims of the offence and the representation made by or on behalf of the accused. It must be noted that the previously proposed CTA included conditions of public policy, national security, etc., which have been removed in the ATA.</p> <p>This provision is an improvement. However, given the recent allegations that have come to light regarding the Attorney General's Department and it functioning both as the legal advisor to the State and the chief prosecuting officer, concerns remain if the decision of withdrawal would be independent and without undue influence. Therefore, measures should be taken to ensure that this provision is not abused and used cautiously.</p>
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		<p><i>(a)</i> to publicly express remorse and apology before the High Court, using a text issued by the Attorney General;</p> <p><i>(b)</i> to provide reparation to victims of the offence, as specified by the Attorney General;</p> <p><i>(c)</i> to voluntarily participate in a specified programme of rehabilitation;</p> <p><i>(d)</i> to publicly undertake that he refrains from committing an offence under this Act or under any other law;</p> <p><i>(e)</i> to engage in specified community or social service; and</p> <p><i>(f)</i> to refrain from committing, any indictable offence, or, breach of peace</p> <p>(4) If such person fulfils the conditions imposed under subsection (3), during the period stipulated for fulfilling such conditions, the Attorney General shall not present a fresh indictment against the accused thereafter on the same charges in the original indictment.</p> <p>(5) If the accused fails without valid excuse to comply with the said conditions, the Attorney General may file a fresh indictment against the accused on the same charges in the original indictment and proceed to prosecute the accused</p>	
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		after the lapse of the period given for the accused to fulfil such conditions.	
Remand pending trial	<p>Section 15 and 15A – accused to be remanded, and remanded at such place as the Defence Secretary orders.</p> <p>Remanded until conclusion of trial, unless Attorney General consents to release before conclusion of trial.</p>	<p>Clause 76 - Grant of bail to persons in remand or in detention</p> <p>Notwithstanding anything to the contrary in the provisions of this Act, if the trial against a person remanded or detained under this Act has not commenced after the expiration of twelve months, from the date of arrest, the Court of Appeal may release such person on bail, upon an application in that behalf, made by the suspect or an Attorney- at-Law on his behalf:</p> <p>Provided however, the High Court may in exceptional circumstances release the suspect on bail subject to such conditions as the High Court may deem fit:</p> <p>Provided further, where the trial against an accused in respect of whom the indictment has been forwarded and filed in the High Court, has not commenced after the expiration of twelve months from the date of such filing, the High Court may consider to release such person on bail, upon an application in that behalf made by the accused or an Attorney - at- Law on his behalf.</p>	<p>The provision on bail is a significant deviation from the Clauses on bail (Clauses 78 and 79) that were contained in the March version of the Proposed ATA.</p> <p>Clause 76 of the proposed ATA is similar to Section 15B of the 2022 Amendment to the PTA. If a trial has not commenced after 12 months from the date of arrest, then the Court of Appeal can release a person on bail.</p> <p>If a trial has not commenced after 12 months of filing an indictment, then the High Court can release a person on bail.</p> <p>This is in addition to the fact that in ‘exceptional circumstances’, a High Court can release a person on bail.</p> <p>This change may assist in addressing the problem of prolonged pre-trial detention that takes place under our law, however, its success will depend on how the judiciary interprets this power.</p>

PART IX – ADMISSIBILITY OF STATEMENTS

<p>Admissibility of Statements</p>	<p>Section 16 – Statements including confessions admissible, as long as not made to anyone below the rank of ASP.</p> <p>Section 17 – Sections 25, 26 and 30 of Evidence Ordinance does not apply</p> <p>Section 18(1)(a) – statement made to Magistrate admissible</p> <p>Section 18(1)(b) – document found in possession etc, admissible; maker of document does not have to be called; contents are proof of facts stated therein</p>	<p>Clause 77 - Statements made to a Magistrate</p> <p>(1) A statement made by any person to a Magistrate under this Act, shall be admissible against such person, subject to the provisions specified in subsection (2) and to the provisions of section 24 of the Evidence Ordinance.</p> <p>(2) (a) A person shall not be legally bound to make a statement or produce an affidavit implicating or incriminating himself in the commission of an offence.</p> <p>(b) Any person who is to be interviewed and his statement is to be recorded, shall have the right, if he so wishes, to have access to, or communicate with, an Attorney-at-Law and obtain legal advice prior to such interview.</p> <p>(c) A Magistrate seeking to record a statement, shall inform the person being interviewed of his rights under this Act prior to such interview.</p> <p>(d) If the person whose statement being recorded at the interview does not understand the language being spoken, the services of an interpreter shall be obtained and the interview shall be conducted</p>	<p>This is a significant improvement from the PTA. Under the proposed ATA only statements given before a Magistrate will be admissible as evidence in court. The statement made to the Magistrate is also subjected to Section 24 of the Evidence Ordinance which stipulates that confession caused by inducement, threat or promise is irrelevant.</p> <p>This Clause also provides for positive provisions such as access and communication with the Attorney-at-Law, the Magistrate required to inform the accused of his rights and audio-visually recording the interview.</p>
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		<p>in a language that could be understood by such person.</p> <p>(e) A translation of the statement shall be transcribed together with the corresponding questions, and kept for future verifications.</p> <p>(f) The interview shall wherever possible be audio-visually recorded.</p>	
<p>Admissibility of a Confession made to a Magistrate</p>	<p>Section 16(2) – burden on person asserting that a statement is irrelevant due to inducement etc, to prove that it was so.</p>	<p>Clause 78 – Pre-conditions to be satisfied for admissibility of a confession made to a Magistrate</p> <p>Notwithstanding anything to the contrary in any other written law, a statement made to a Magistrate by a person accused of having committed an offence under this Act, shall not be admissible in evidence against such person, unless-</p> <p>(a) the Magistrate who recorded such confession had immediately prior to and soon after recording the statement, cause the person who made the statement to be examined by a government forensic medical specialist; and</p> <p>(b) the report of the forensic medical specialist is produced by the prosecuting authority, during the <i>vio-re-dire</i> inquiry, that may be conducted for verifying the admissibility of the confessional statement.</p>	<p>This is an improvement from the PTA. This provision ensures that there is no room for confessions to be extracted by means of torture. Under the previously proposed CTA, the burden of proving that a confession was voluntarily made was on the prosecuting authority. However, the ATA has removed this provision, thereby placing the burden of proving innocence on the accused.</p>

Part X – MISCELLANEOUS ORDERS

Proscription Orders	<p><u>PTA Regulations</u></p> <p><i>Gazette</i> Extraordinary No. 1721/2 of August 29, 2011</p> <p>Declares that the LTTE is a Proscribed organisation and restrictions are imposed in this regard.</p> <p><u>Regulations under the UN Act No. 45 of 1968.</u></p> <p><i>Gazette</i> Extraordinary No. 1758/19 of May 15, 2012 (Amended by <i>Gazette</i> Extraordinary No. 1892/40 of December 11, 2014)</p> <p><i>Gazette</i> Extraordinary No. 1760/40 of May 31, 2012 (Amended by <i>Gazette</i> Extraordinary No. 1991/52 of November 4, 2016) - Provided for certain Financial restrictions or designated organisations.</p>	<p>Clause 79- President to make Proscription Orders</p> <p>(1) Notwithstanding anything in any other written law, where the President has reasonable grounds to believe that any organization is engaged in any act amounting to an offence under this Act, or is acting in an unlawful manner prejudicial to the national security of Sri Lanka or any other country, the President may by order published in the Gazette, (hereinafter referred to as “Proscription Order”) proscribe such organization in terms of the provisions of this Act.</p> <p>(2) A Proscription Order may be made by the President, for giving effect to-</p> <p style="padding-left: 20px;">(a) a recommendation made by the Inspector General of Police; or</p> <p style="padding-left: 20px;">(b) a request made by the Government of any foreign country to the Government of Sri Lanka.</p> <p>(3) A Proscription Order may include one or more of the following prohibitions:-</p> <p style="padding-left: 20px;">(a) prohibiting any person being a member of such organization;</p> <p style="padding-left: 20px;">(b) prohibiting such organization recruiting members to such organization;</p> <p style="padding-left: 20px;">(c) prohibiting any person acting in furtherance of the objectives of such organization;</p>	<p>The proposed ATA creates a new regime of Proscription Orders (POs) which apply to organisations.</p> <p>The ATA also empowers the President to declare organisations as “proscribed organisations”, if he/she has undefined “reasonable grounds” to believe any organisation meets the substantive grounds for a PO.</p> <p>A declaration proscribing an organisation can <i>inter alia</i> prohibit any person being a member of such organisation; prohibit the organisation recruiting members; prohibit any person acting in furtherance of the objectives of the organisation; prohibit conducting meetings, activities and programs; prohibit the use of bank accounts; prohibit the organisation entering into contracts; prohibit raising of funds and receiving grants and bequests; prohibit transferring funds and assets of the organisation; prohibit lobbying on behalf of such organisation and prohibit any person publishing of any material in furtherance of the objects of such organisation.</p> <p>The PO regime thus goes beyond the proposed ATA’s specified offences. The request of other countries can also be grounds for issuing POs.</p>
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		<p>(d) prohibition the conducting of meetings, activities and programmes by such organization;</p> <p>(e) prohibiting on the use or mobilization of bank accounts and other financial depositories of such organization;</p> <p>(f) prohibiting to entering into contracts;</p> <p>(g) prohibiting the raising of funds and receiving grants and bequests;</p> <p>(h) prohibiting the transferring funds and assets of the organization;</p> <p>(i) prohibiting the lobbying and canvassing on behalf of such organization; or</p> <p>(j) prohibiting any person by publication of any material in furtherance of the objects of such organization.</p> <p>(4) Any prohibition, restriction, suspension or sanction, issued under any other written law in respect of an organization in respect of which a Proscription Order has been issued under subsection (1), shall continue to be in operation, without prejudice to any such Proscription Order issued under subsection (1).</p> <p>(5) Immediately after publication of a Proscription Order in the Gazette, it shall be communicated to the organization in respect of which such Proscription Order has been issued, and be immediately informed to the members and employees of such organization together with reasons therefor, by way of direct communication, whenever such communication is possible. A public announcement of such Order shall also be made.</p>	<p>These POs could have the impact of impairing the Constitutionally granted Fundamental Rights of persons, as well as other liberties. The wording of sub-Clause (1) which states “<i>acting in an unlawful manner prejudicial to the national security of Sri Lanka</i>” is over broad and can be abused. This provision can be misused in a manner to curtail dissent and proscribe organisations that advocate for legitimate human rights concerns. This can be addressed to a certain extent by inserting the word ‘wrongful’ before the word ‘manner’ in the provision.</p> <p>POs can effectively be extended indefinitely. They are initially issued for one year, after which the Minister can extend them for one year at a time. These grounds for extension are vague and broad.</p> <p>As per PTA Regulation in <i>Gazette Extraordinary</i> No. 1721/2 of August 29, 2011, the LTTE is proscribed and certain restrictions are imposed. Sub Clause (d) of Clause 98 provides for the regulations made under the PTA to remain valid, and the said PTA regulation is specifically mentioned in this regard.</p>
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		<p>(6) The President may, on an application made by a person or an organization aggrieved by a Proscription Order issued under subsection (1), review or cancel such Order after considering the representations of such person or organization.</p> <p>(7) (a) A Proscription Order made under this section may be initially issued for a period of one year. (b) On the lapse of the period of one year, the President may, taking into account, the contemporary and reliable information and security needs, extend any such Order for further periods not exceeding one year at a time.</p> <p>(8) Any person or organization aggrieved by a Proscription Order or any extension thereof, shall be entitled to make an application in terms of Article 126 of the Constitution.</p>	
Restriction Orders	<p>Section 11 – Power of Minister to order Restriction of Movement in certain cases</p> <p>(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</p>	<p>Clause 80 – President to make Restriction Orders</p> <p>(1) Where on a recommendation made by the Inspector General of Police, the President has reasonable grounds to believe, that any person has committed, or is making preparation, to commit an offence under this Act, and the conduct of such person cannot be investigated without him being arrested, and if the President is of the opinion that it is necessary to do so, the President may, after an application is made to the High Court by the Attorney General and upon obtaining the sanction of such Court, make an order in writing (hereinafter referred to as a “Restriction Order”)</p>	<p>The restrictions under the proposed under the ATA are similar to the PTA’s restriction order (RO) regime with certain improvements;</p> <ul style="list-style-type: none"> • A RO under the proposed ATA cannot be issued unilaterally by the President. Restriction orders have to be on a recommendation made by the IGP and secured with the approval of the High Court. • A RO includes restrictions on movement outside the place of residence; travelling overseas; travelling within Sri Lanka; travelling outside the normal route

	<p>may be specified in such order in respect of</p> <p>(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 organization, 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 organization, 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.</p> <p>(2) Where the Minister makes a restriction order in respect of any person while an order of</p>	<p>imposing such restrictions, as shall be specified in that order, for a period not exceeding one month.</p> <p>(2) A Restriction Order made under subsection (1) may include restrictions on - (a) the movement outside the place of residence; (b) travelling overseas; (c) travelling within Sri Lanka; (d) travelling outside the normal route between the place of residence and place of employment; (e) the communication or association, or both, with particular persons as shall be specified in the Order; or (f) engaging in certain specified activities that may facilitate the commission of an offence under this Act.</p> <p>(3) Any such Restriction Order may require the suspect to report to any police station on a specified date, or at specified periodic intervals.</p> <p>(4) A Restriction Order under subsection (1) shall be made, only if such Order- (a) is necessary for the prevention of the commission of an offence under this Act; (b) is necessary to conduct investigations into the commission of an offence under this Act; (c) is proportionate to the offence alleged to have committed or likely to be committed under this Act; and (d) does not amount to an arbitrary deprivation of liberty or restriction on the exercise of Fundamental Rights, in terms of the provisions of the Constitution.</p>	<p>between the place of residence and place of employment; the communication or association with particular persons; or engaging in certain specified activities that may facilitate the commission of an offence.</p> <ul style="list-style-type: none"> • The proposed ATA requires the President to have “reasonable grounds” to believe a person has or is making preparation to commit an offence under the Act. • A RO under the proposed ATA may not exceed one month and can only be extended one month at a time for an aggregate of six months. The PTA has a limit of three months and can be extended three months at a time for an aggregate of 18 months. • Under the proposed ATA, ROs have necessity and proportionality requirements, ROs must be necessary to prevent offences under the Act and to conduct investigations, proportionate to the offence concerned and not arbitrarily deprive liberty or restrict Fundamental Rights. • The penalty for breaching a RO has reduced. <p>Further, under the proposed ATA, ROs require persons against whom they are issued to provide a statement to the Police, which must be submitted to the President within a week of</p>
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	<p>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.</p> <p>(3) Every order made under subsection (1) shall be in force for such period, not exceeding three months, as may be specified therein:</p> <p>Provided, that the Minister may, by or der 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.</p> <p>(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</p>	<p>(5) The court shall cause any such Restriction Order to be served on the person in respect of whom such Order was made, and require the Inspector General of police to take necessary steps to enforce any such Order and ensure compliance therewith.</p> <p>(6) (a) The Inspector General of Police shall cause, the statements of the person in respect of whom the Restriction Order was made, to be recorded, within one week of making thereof and submit it to the President, enabling the President to determine whether the said Order shall be revoked or varied.</p> <p>(b) Prior to recording the statement, the relevant person shall be informed of his rights under this Act, and be informed of the grounds for making the Restriction Order.</p> <p>(c) Prior to recording the statement, the relevant person shall be permitted if he so requests, to have access to, or confidential communication with, an Attorney-at-Law.</p> <p>(d) The interview shall be conducted and the statement shall be recorded in a language understood by the person being interviewed, with the services of an interpreter obtained where necessary: Provided however, where the services of an interpreter is obtained, the interview shall be recorded with its translation, and be transcribed, and preserved, for future verification.</p> <p>(e) Wherever possible, the interview shall be audio visually recorded.</p>	<p>its issue for purposes of review/revocation. The Clause makes additional provision for the presence of an attorney and language and transcription facilities.</p> <p>Under the proposed ATA ROs can require persons issued with them to report to police stations on specified dates or intervals of time. There is no corresponding provision under the PTA.</p> <p>Exploitation of the powers under this Clause could result in the restriction of liberties and freedoms of the people.</p> <p>It should be noted that, in the previous version of the Bill gazetted in March, a suspected person was able to be “investigated without him being arrested”. This has changed in the September version of the Bill, which is a welcome development.</p> <p>Additionally, under the previous version of the ATA ROs can be appealed to the Court of Appeal and the Court was obliged to dispose of the appeal within a month. This has also changed as the September version of the ATA allows applications to be made to the Supreme Court under Article 126 of the Constitution. Notably, under the PTA, ROs are non-reviewable by the judiciary.</p>
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	<p>of the period specified in such order or the period as extended under subsection (3).</p> <p>(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.</p>	<p>(7) Any person who wilfully acts in contravention of a Restriction Order made under this Act, commits an offence, and shall upon conviction by the High Court be liable to imprisonment which may extend to three years and to a fine not exceeding rupees three hundred thousand.</p> <p>(8) The President shall review a Restriction Order made under this section in every month and extend the period thereof, if necessary.</p> <p>(9) The aggregate period of any Restriction Order shall not exceed six months.</p> <p>(10) The person in respect of whom a Restriction Order or an extension thereof has been made, or an Attorney-at-Law on his behalf, shall be entitled to make an application in terms of Article 126 of the Constitution.</p>	
Curfew Orders	No corresponding Section in the PTA.	<p>Clause 81 – Curfew Orders</p> <p>(1) Notwithstanding the provisions of the Public Security Ordinance (Chapter 140), the President may by Order published in the Gazette (hereinafter referred to as a “Curfew Order”) declare curfew under this Act, for a period specified in such Order, either to the entirety or part of Sri Lanka including its territorial waters and air space, for the purposes referred to in subsection (2) and subject to the provisions of subsection (3).</p>	<p>No equivalent provision in the PTA.</p> <p>The proposed ATA creates an entirely new regime of Curfew Orders (COs) whose parameters go considerably beyond those specified in the Public Security Ordinance (PSO).</p> <p>Under the proposed ATA, COs can be issued by the President. on the request of the Minister as well as his own motion. Under the PSO, only the President has the initiative in declaring a curfew</p>

		<p>(2) The President may make a Curfew Order, for the purposes of –</p> <p>(a) controlling, detecting or investigating the occurrence of systematic and widespread committing of terrorism and other offences under this Act;</p> <p>(b) for the protection of national or public security from terrorism and other offences under this Act; or</p> <p>(c) to prevent the systematic and widespread committing of offences under this Act.</p> <p>(3) (a) The maximum period of any Curfew Order shall not exceed twenty-four hours at a time.</p> <p>(b) There shall be an interval of a minimum period of three hours between two periods of Curfew.</p> <p>(4) A Curfew Order may be made subject to such exemptions that may be imposed to provide for humanitarian needs.</p> <p>(5) Any such Curfew Order, shall-</p> <p>(a) specify categories of persons who are exempted from the application of such Order;</p> <p>(b) specify any person who may be authorized to issue permits-</p> <p>(i) exempting any person or persons from adhering to the Curfew Order; and</p> <p>(ii) authorizing such person or persons to travel from one place to another, due to the need of maintaining essential services and supplies, emergency requirements and humanitarian needs, as may be specified in such permit.</p>	<p>Curfew under COs provided for in the proposed ATA can cover a greater territory than ordinary curfews under the PSO, as it includes the “entirety or part of Sri Lanka including its territorial waters and airspace”. Under the PSO curfews can only be declared for “any public road, railway, public park, public recreation ground or other public ground or the seashore... throughout Sri Lanka or specified parts of it”, but does not extend to territorial waters or airspace.</p> <p>Under the proposed ATA, curfews can be declared for purposes additional to those for curfews under the PSO/ can be declared to control, detect, investigate, protect national/public security from and prevent the spread of offences under the Act. These additional purposes give far broader space for the President to declare curfew than the PSO which specifies that curfews can only be declared for the “maintenance of public order in any area”. This leaves the CO regime open for potential abuse.</p> <p>COs under the proposed ATA explicitly permits Police to use “reasonable force” under certain circumstances.</p> <p>The proposed ATA does not provide for judicial oversight of COs, at both the issuance or extension stages within this Clause. Judicial review of all orders under the Bill are</p>
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		<p>(6) Any person who needs to be fully or partly exempted from a Curfew Order, shall be entitled to make an application to the authority referred to in subsection (5) in the prescribed form.</p> <p>(7) A person who wilfully violates a Curfew Order, commits an offence, and upon conviction by a Magistrate be liable to a fine not exceeding rupees three hundred thousand.</p> <p>(8) It shall be lawful for any arresting officer to use reasonable force, as may be necessary to ensure compliance with a Curfew Order, where all other means of ensuring compliance have proved ineffective.</p>	<p>however allowed by the provisions of Clause 94.</p> <p>This Clause should thus be applied carefully so as to prevent the restrictions of persons liberties, as it could possibly be exploited by authorities.</p>
Prohibited Places	No corresponding Section in the PTA.	<p>Clause 82 – Prohibited Places</p> <p>(1) For the purposes of this Act, the President may, on a recommendation made by the Inspector General of Police or the Commander, respectively of, Army, Navy or Air Force or the Director General of Coast Guard, from time to time, by Order published in the Gazette, stipulate any place of public use or any other location to be a prohibited place (hereinafter referred to as the “Prohibited Place”).</p> <p>(2) The Order under subsection (1) shall include prohibitions on the entry, and where necessary, may include prohibitions on taking photographs, video recording and making sketches of the Prohibited Place.</p>	<p>The proposed ATA creates an entirely new regime of Prohibited Places Orders which can prohibit entry into a prohibited place, even prohibit photography, video recording and sketch making of such a place. It also provides for militarization of policing with powers allocated to tri-force commanders.</p> <p>Whilst in the previous version of the Proposed ATA from March, the prohibited places orders appear to have no time limits enabling potentially a place to be indefinitely declared a prohibited place, in the September version of the ATA, a new sub-Clause 82(5) is introduced where, an Order prohibiting a place shall not exceed a period of seven days. Further, under the new version, to extend the</p>

		<p>(3) In addition to the publication of the Order in respect of a Prohibited Place in the Gazette, sufficient publicity through other means shall be given.</p> <p>(4) Upon being declared a place as a Prohibited Place, notices shall be placed at entry points to such place where possible, indicating that such place has been declared as a Prohibited Place.</p> <p>(5)(a) The period of operation of an Order made under subsection (1) shall not exceed for a period of seven days.</p> <p>(b) Where the period of operation of any such Order is required to be extended for a period exceeding seven days, an application in that behalf shall be made to obtain the prior approval from a Magistrate having jurisdiction in the area within which such Prohibited Place is situated. Such Magistrate shall prior to the issuance of such order satisfy himself of the necessity for issuing the same and may make an order subject to any conditions.</p> <p>(6) After making an Order under subsection (1), the officer in charge or any other person having lawful authority and control over the Prohibited Place as authorized by the President, shall specify the categories of persons who shall be authorized to enter and remain in such place, and he shall also be entitled to authorize any other person to enter such place on conditions he may specify.</p>	<p>Order prior approval of the relevant Magistrate should be obtained.</p> <p>As per the revised such-Clause 82(6) in the new version of the ATA, the officer in charge of the prohibited place will be able to make arbitrary decisions without objective justification, as to who may enter/remain a prohibited place. This Clause appears to be an attempt to circumvent the current requirement of the police having to go before the courts to obtain time-limited orders restraining persons from particular places by demonstrating to the judiciary that such orders are necessary to prevent a breach of peace.</p> <p>Under the proposed ATA, these orders are made by the Minister on the recommendation of the IGP, Commanders of the Armed Forces, or Director General of the Coast Guard.</p> <p>The reasons for which these orders may be issued (i.e., “for the purposes of this Act”) are broad and may be subject to abuse.</p> <p>The September version of the ATA also introduces a new sub-Clause 82(9), which expands on what accounts for a place of public use. As such, highways and any other premises that the public have access to at any material point in time, either by right or otherwise are deemed a public place which can be subjected to prohibition under the Act. This could pose a serious threat to the</p>
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		<p>(7) Any person wilfully contravenes an Order made under subsection (1) by entering or remaining in a prohibited place without lawful authority, commits an offence, and shall on conviction be liable to imprisonment for a term not exceeding three years and to a fine not exceeding rupees three hundred thousand or to both such fine and imprisonment.</p> <p>(8) Any person wilfully contravenes an Order made under subsection (2) by taking photographs, video recording and making sketches of a prohibited place commits an offence, and shall upon conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding rupees three hundred thousand.</p> <p>(9) For the purpose of subsection (1), “place of public use” includes any highway and any other premises or place to which at the material time the public have access or are permitted to have access, whether as of right or otherwise.</p>	<p>freedom of expression, freedom of association and the right to dissent by way of protests for the people of Sri Lanka in the future.</p> <p>The proposed ATA does not provide for judicial oversight within this Clause. Judicial review of all orders under the Bill is however allowed by the provisions of Clause 94.</p>
<p>Seizure, Confiscation and Forfeiture of Property</p>	<p>Section 4 – Forfeiture of Property</p> <p>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"</p> <p>(a) all property movable and immovable, of that person shall,</p>	<p>Clause 83 – Seizure, Confiscation and Forfeiture of Property</p> <p>(1) Any police officer may seize any movable property used for committing or concerned in committing an offence, or derived out of committing an offence under this Act.</p> <p>(2) Any such seizure shall be valid for a period not exceeding three days of such seizure unless such seizure is affirmed and extended by a</p>	<p>The proposed ATA allows the seizure, confiscation and forfeiture of property beyond what is allowed under the PTA. Whereas the PTA in Section 4 allows only the forfeiture of the property of convicted persons, the CTA permits seizure and confiscation of property used for, concerned in, or derived out of, committing an offence under the Act, with no conviction necessary of the property owner.</p>

	<p>by virtue of such conviction, be deemed to be forfeited to the Republic ; and</p> <p>(b) any alienation or other disposal of such property effected by such person after the 24th day of July, 1979, shall be deemed to have been, and to be, null and void.</p>	<p>Magistrate on a request made by an officer in charge of a police station.</p> <p>(3) Any seizure of property not so affirmed and extended as aforesaid shall cease to have effect after the expiry of the said period of three days.</p> <p>(4) Any seizure of property affirmed and extended under subsection (2) shall cease to be in force upon the expiry of ninety days of such affirmation unless authorized by a Magistrate, who may authorize the extension of the seizure till the conclusion of the trial, relating to the relevant offence, upon a request made by the officer in charge of the police station.</p> <p>(5) Where any person establishes his claim in respect of the property so seized, the Magistrate may release such property to the person who establishes the claim, on conditions that may be imposed, if he is satisfied that-</p> <p>(a) such person is the bona-fide owner, who has no knowledge of the commission of the offence; or</p> <p>(b) such person had exercised due diligence to prevent the commission of such offence.</p> <p>(6) Where any person is convicted for an offence under this Act, the Court may make order subject to the determination of an appeal against such conviction that any property movable or immovable used in the commission of such offence or derived out of such offence, be forfeited and confiscated to the State.</p>	<p>Seizures are valid for up to three days unless affirmed and extended for up to 90 days by a Magistrate on the request of an OIC, or until the conclusion of the trial</p> <p>For property to be released to its owner the person must establish before a Magistrate that they are the bona fide owner, has no knowledge of the offence's commission or exercised due diligence to prevent it.</p> <p>Sub-Clause (7) allows the Court to order the forfeiture and confiscation of property for the State's benefit even where a person has been acquitted of having committed the offence. There are no grounds given under which such order may be made, and this may be a serious infringement on the rights of innocent persons.</p>
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		<p>(7) Where any person has been acquitted of any charge under this Act, the Court may make order that any property used for or derived out of the commission of such offence be forfeited and confiscated to the State.</p> <p>(8) Notwithstanding the provisions of subsections (6) and (7), any property so forfeited and confiscated to the State which have been used by any person to commit an offence under this Act without the knowledge or consent of the owner of such property, shall be discharged from such forfeiture and confiscation.</p> <p>(9) Any person aggrieved by an order made under this section, may appeal to the Court of Appeal.</p> <p>(10) The provisions of subsections (5), (6), (7) and (8) shall not apply to any instrument, weapon, ammunition or utensil used to commit an offence under this Act.</p>	
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PART XI – SENTENCING GUIDELINES

<p>Aggravating factors when determining the term of imprisonment</p>		<p>Clause 84 - Aggravating factors When determining the term of imprisonment to be imposed on a person convicted of having committed an offence under this Act, the following factors may be taken into account as aggravating factors which warrant the imposing of an enhanced term of imprisonment, subject to the provisions of this Act: - (a) the effect of the commission of the relevant offence on the territorial integrity or sovereignty of Sri Lanka, or of any other sovereign country; (b) the effect of the commission of the relevant offence on the security or defence of Sri Lanka; (c) the number of lives lost due to the commission of the offence; (d) whether the commission of the offence has given rise to public disquiet; (e) injuries or harms inflicted on any person in or outside Sri Lanka; (f) the impact on the victims of the offence and aggravated nature of the consequences undergone by them; (g) the effect on the security of the general public; (h) the impact on the peaceful co-existence of the people of Sri Lanka; (i) financial and material loss caused to the Government of Sri Lanka and to the general public; (j) financial and other resources required for the reparation and restoration of the damages caused; and (k) any other factor as may be determined by the court to be taken into account as an aggravating factor.</p>	<p>This novel provision is similar to the previously proposed CTA, except for the court's ability to determine taking into account “any other” factors. This is vague in the use of language and allows broad interpretation.</p> <p>In the previous version of the ATA, modal verb “shall” was used to refer to aggravating factors. In the September version of the ATA, the modal verb is switched to “may”.</p>
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<p>Mitigating factors when determining the term of imprisonment</p>		<p>Clause 85 - Mitigating factor When determining the term of imprisonment to be imposed on a person convicted of having committed an offence under this Act, the following factors may be taken into account as mitigating factors which warrant reduced term of imprisonment subject to the provisions of this Act:- (a) publicly denouncing terrorism; (b) expression of remorse; (c) young age at the time of committing the offence; (d) old age at the time of sentencing; (e) time period spent in detention or remand; (f) coercion or duress under which the offence had been committed; (g) voluntarily providing of reparation by the accused to the victims of the offence; (h) public denouncement of violence, and other offences in respect of which the accused was convicted of guilty; (i) genuine commitment towards the preservation and protection of the territorial integrity and sovereignty of Sri Lanka; (j) voluntarily participating in and completing a rehabilitation programme, stipulated by the court; or (k) any other factor as may be determined by the court to be taken into account as a mitigating factor.</p>	<p>This provision is similar to the previously proposed CTA except for the courts ability to determine taking into account “any other” factors. This is vague in the use of language and allows broad interpretation.</p> <p>In the previous version of the ATA, modal verb “shall” was used to refer to mitigating factors. In the September version of the ATA, the modal verb is switched to “may”.</p>
<p>Independent Review Panel (Removed from the September Version of the ATA)</p>	<p>Section 3 - Advisory Board (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.</p>	<p>No Provision</p>	<p>In the March version of the Proposed ATA, Clauses 89-94 introduced an independent review panel. The powers and functions of such review panel was laid out in Clause 92 of the previous Proposed ATA.</p>

	<p>(2) Any person in respect of whom any detention order or restriction order has been made shall be informed of the unlawful activity in connexion with which such order has been made and such person or any other person on his behalf may make representations to the Advisory Board.</p> <p>(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.</p> <p>(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.</p>		<p>This panel was comparable to the Advisory Board under the PTA, which also consists of three members and is said to be appointed by the President. The independence of the Review Panel was highly questionable due to the foregoing and the fact that it is not subject to any checks or review is troubling.</p> <p>CPA comments that the requirement to appoint persons who have expertise in the fields of human rights and criminal justice is not a mitigatory factor to the concerns raised above.</p>
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PART XII – GENERAL

<p>Can there be suspended sentences or conditional release under the CTA?</p>	<p>Section 20 – Certain provisions of the Code of Criminal Procedure Act not to apply to persons convicted or found guilty of an offence under this Act.</p> <p>Notwithstanding anything in the Code of Criminal Procedure Act;</p> <p>(a) the provisions of section 303 of that Act shall not apply in the case of any person who is convicted;</p> <p>(b) the provisions of section 306 of that Act shall not apply in the case of any person who pleads or is found guilty,</p> <p>by or before any court of any offence under this Act.</p>	<p>Clause 86 – Certain provisions of the Code of Criminal Procedure Act not to apply</p> <p>Notwithstanding anything to the contrary in the Code of Criminal Procedure Act 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 for any offence under this Act.</p>	<p>This is an improvement from the PTA and even from the CTA, which previously limited the application of both Sections 303 and 306 of the Code of Criminal Procedure.</p> <p>Section 303 of the Code of Criminal Procedure Act deals with Suspended sentences and Section 306 deals with Conditional Release. Under this law, it will be possible to suspend the sentence of a person found guilty under this Act.</p> <p>The non-applicability of Section 306 however creates a restriction on the exercise of judicial discretion as it limits the nature of the orders which a judge can give.</p>
<p>Applicability of the Children and Young Persons Ordinance</p>		<p>Clause 87 – Children and Young Persons Ordinance to apply</p> <p>The provisions of Children and Young Persons Ordinance (Chapter 23) shall apply to any child who is found guilty and convicted for having committed an offence under this Act.</p>	<p>The PTA had no equivalent Section, so the express recognition of this ordinance may be considered an improvement.</p>

<p>Protection of Officers</p>		<p>Clause 88 – Protection of Officers & c.</p> <p>(1) An Order made or direction given under this Act may be questioned in proceedings as provided for under this Act.</p> <p>(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 in good faith done or purported to be done in pursuance or suppose pursuance of any Order made, or direction given under this Act.</p>	<p>This is a new provision introduced under the September version of the ATA. Given the manner in which the anti-terrorism laws have been used and abused in the past, a provision of this nature exempting liability for acts done in “good faith” under the Act, raises critical concerns, especially regarding the accountability, checks and balances of power and impunity.</p>
<p>What happens when the offence is committed by a body of persons?</p>	<p>Section 25 – Offences by bodies of persons</p> <p>Where an offence under this Act is committed by a body of persons, then if that bodies of body of persons is"</p> <p>(a) a body corporate, every director and officer of that body corporate; or</p> <p>(b) a firm, every partner of that firm; or</p> <p>(c) a body unincorporate other than a firm, every officer of hat body responsible for its management and control, shall be deemed to be guilty of such offence:</p> <p>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</p>	<p>Clause 89 – Offences by bodies of persons</p> <p>Where an offence under this Act is committed by a body of persons, if that body of persons is-</p> <p>(a) a body corporate, every director and principal executive officer of that body corporate; or</p> <p>(b) a firm, every partner of that firm; or</p> <p>(c) a body unincorporated other than a firm, every officer of that body responsible for its management and control,</p> <p>shall be deemed to be guilty of such offence:</p> <p>Provided that, no such person shall be deemed to be guilty of such offence, if he proves that such offence has committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.</p>	<p>Similar to the corresponding provision in the PTA.</p> <p>An unfair burden has been placed on the individuals to prove that they did not have knowledge of certain acts or that they exercised due diligence. This violates the principle of innocent until proven guilty.</p>

	that he exercised all due diligence to prevent the commission of such offence.		
Regulations	<p>Section 27 – Regulations</p> <p>(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.</p> <p>(2) Every regulation made by the Minister shall be published in the <i>Gazette</i> and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.</p> <p>(3) Every regulation made by the Minister shall as soon as convenient after its publication in the <i>Gazette</i> 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 <i>Gazette</i>.</p>	<p>Clause 90 – Regulations</p> <p>(1) The President may make regulations, for the purpose of carrying out or giving effect to the purposes, principles and provisions of this Act.</p> <p>(2) Every regulation made by the President shall be published in the <i>Gazette</i> and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.</p> <p>(3) Every regulation made by the president shall within thirty days of its publication in the <i>Gazette</i> be brought before Parliament for its approval.</p> <p>(4) Any regulation not so approved shall be deemed to be rescinded from the date of such disapproval but without prejudice to anything duly done thereunder.</p> <p>(5) Notification of the date on which a regulation is deemed to be rescinded shall be published in the <i>Gazette</i>.</p>	<p>Under the PTA, it was the Minister who made regulations whilst under the proposed ATA, the President makes regulations.</p> <p>The proposed ATA puts a time limit for the regulation to be placed before Parliament while the PTA only states that this must be done as soon as convenient. Therefore, this is an improvement from the PTA.</p> <p>However, a problem under the PTA is that over the years a wide array of acts have been carried out by way of PTA regulations, and this too leaves open the scope for such broad regulations.</p> <p>It must be borne in mind that unlike regulations under the Public Security Ordinance, regulations under the PTA cannot violate any Fundamental Right.</p>

<p>Directions</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 91 – Directions</p> <p>(1) The President may from time to time issue directions subject to the provisions of this Act, which shall apply to police officers and the officers of Armed Forces pertaining to the manner in which the provisions of this Act shall be enforced.</p> <p>(2) The directions issued under subsection (1), shall be solely for the purpose of giving effect to the provisions of this Act, in an efficacious manner and, be in compliance with the Human Rights norms and standards recognized by law.</p> <p>(3) Every such direction shall be published in the <i>Gazette</i></p>	<p>There is no corresponding Section in the PTA. While on the face of it, these directions may not seem a threat, the manner in which this power is used administratively could cause a violation of rights and liberties, and so the power to make such directions should be narrowly construed.</p>
<p>Rehabilitation Programmes</p>	<p>PTA Regulations; Gazette Extraordinary No. 1721/5 of August 29, 2011</p> <p>Provides for protective accommodation and rehabilitation centres approved by the Secretary to the Ministry of Defense for the purpose of keeping and receiving surrendeeds.</p> <p>Prevention of Terrorism (De-radicalization from holding violent extremist religious ideology) Regulations No. 01 of 2021, Gazette Extraordinary No. 2218/68 of March 12, 2021</p>	<p>Clause 92 – Rehabilitation Programmes</p> <p>(1) The President may make Regulations to implement rehabilitation programmes for the persons in respect of whom the Attorney General has recommended suspension and deferment of criminal proceedings under section 70, or the Attorney General has withdrawn indictments under section 76.</p> <p>(2) Regulations under subsection (1) shall include-</p> <ul style="list-style-type: none"> (a) objectives to be achieved by the conduct of the programme; (b) nature of rehabilitation activities; (c) nature of the training to be provided; (d) the authority or authorities who conduct the rehabilitation or training; (e) the location of the programme; and 	<p>This gives the President the power to make regulations similar to the 2021 rehabilitation guidelines which were suspended by the Supreme Court. The concern is that reference to these rehabilitation programmes may not be voluntary, and additionally, that persons who have not been found guilty of an offence by a court of law may be compulsorily sent to these rehabilitation programmes, thus violating several of their Fundamental Rights including the principle of innocence until found guilty and the freedom of movement.</p>

	Provide for a system of rehabilitation in lieu of prosecution of a suspect. (These regulations are currently not in force due to a stay order issued by the Supreme Court suspending their operation)	(f) the duration of the programme, and (g) any other matter relating to the implementation of any rehabilitation programme under this section.	When the Bureau of Rehabilitation Bill was challenged before the Supreme Court in 2022 (<u>SC SD 54-61/2022</u>) the Supreme Court held that a person could only be referred to rehabilitation with their consent, ascertained by judicial scrutiny, or by an order of Court.
Act to prevail over other written law.	Section 28 – This Act to prevail over other written law 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.	Clause 93 - This Act to prevail over other written law The provisions of this Act shall have effect notwithstanding anything contained in any other written law and 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.	This provision is identical to the Section in the PTA and had previously been deleted under the proposed CTA. This raises concerns as protections under other laws may not be applicable to persons arrested or detained under the ATA.
Review of orders	Section 10 – Order under Section 9 to be Final 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.	Clause 94 – Judicial Review Nothing contained in this Act, shall be read and construed as preventing any person aggrieved by any decision, determination, order or direction, made by any relevant authority under this Act, seeking relief through judicial review, in terms of the provisions of the Constitution.	The proposed ATA provision is an improvement from the PTA provision which refers to Detention Orders. Under the proposed ATA there is no ambiguity as to the availability of Judicial review, and this would include Detention Orders.

PART XIII – REPEAL AND TRANSITIONAL PROVISIONS

<p>Repeal of the PTA</p>		<p>Clause 95 - Repeal of Act, No. 48 of 1979</p> <p>The Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979, is hereby repealed.</p>	<p>This Clause expressly repeals the PTA.</p>
<p>Transitional provisions</p>	<p>No corresponding Section in the PTA.</p>	<p>Clause 96 – Transitional Provisions</p> <p>Notwithstanding the repeal of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 (hereinafter referred to as the “repealed Act”) -</p> <p>(a) any investigation, trial, appeal or application held, preferred or made under the repealed Act and pending decision, in any court or with other authority, on the day immediately preceding the date of commencement of this Act shall be disposed of, continued, held or entertained, as nearly as may be practicable, under the provisions of the repealed Act including the provisions pertaining to procedure and evidence;</p> <p>(b) any person suspected of having committed or concerned in committing an offence under the repealed Act prior to the day immediately preceding the date of commencement of this Act, in respect of whom the proceedings have not been instituted as at the date of commencement of this Act, shall be prosecuted against, under the provisions of the repealed Act and the legal proceedings into any such offence shall be held by the relevant authority, as nearly as may be practicable, under the provisions of this Act:</p>	<p>Under the CTA, any trial, appeal or application already taking place under the PTA was to continue under that law. However, the proposed ATA also adds investigations to this category. However, there is no need for investigations currently being done under the PTA to continue under that law, and not subject to the added protections under the ATA.</p>

		<p>Provided however, prior to filing the indictment for any such offence the Attorney General shall consider the possibility to suspend or defer criminal proceedings under section 70 of this Act;</p> <p>(c) all sentences passed and any decree or order entered or made in any criminal proceeding under the repealed Act, immediately prior to the date of commencement of this Act, shall be deemed, respectively to have been passed or made under the corresponding provisions of this Act and be enforced and given effect accordingly; and</p> <p>(d) all regulations and orders made under the provisions of the repealed Act, prior to the date of commencement of this Act, including but not limited to regulations proscribing any organization and including the Regulations published in <i>Gazette Extraordinary</i> No. 1721/2 of August 29, 2011, shall be deemed, to have been made under the corresponding provisions of this Act and be enforced and given effect accordingly.</p>	
<p>Notable definitions in interpretation section</p>		<p>Clause 97 – Interpretation</p> <p>...Confidential Information means –</p> <p>“(a) any information, the dissemination of which is likely to have an adverse impact on the security and the defence of Sri Lanka;</p> <p>(b) any information not in the public domain, the dissemination of which is likely to have an adverse effect on national security or public security, relating to-</p>	<p>The definition of confidential information is relevant to the offence under Clause 9 of the ATA, terrorism-related offences, where subject to certain conditions, the gathering or the supply of this information can be an offence under the Act.</p>

		<p>(i) the persons of the police, armed forces or Department of Coast Guard;</p> <p>(ii) the functions, movements or whereabouts of a specified person;</p> <p>(iii) a prohibited place or an approved place of detention;</p> <p>(iv) the conduct of investigations into offences under this Act, findings of such investigations, persons arrested and detained and identity of officers conducting investigations;</p> <p>(c) any information relating to the police or the armed forces, on the conduct of any official activity, including any law enforcement or military measure which is intended to be carried out or is being carried out, or has been carried out;</p> <p>(d) any secret code, word, password or encryption detail relating to national security and defence;”</p>	
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