

Questions and Answers
Anti-Terrorism Bill
Centre for Policy Alternatives
March 2024

This document provides an insight into the Anti-Terrorism Bill (ATB) in a question-and-answer format. The Centre for Policy Alternatives (CPA) has previously [commented](#) on this controversial Bill and also [challenged](#) the ATB in the Supreme Court of Sri Lanka. For details on CPA's written submissions to the Supreme Court, please see [here](#).

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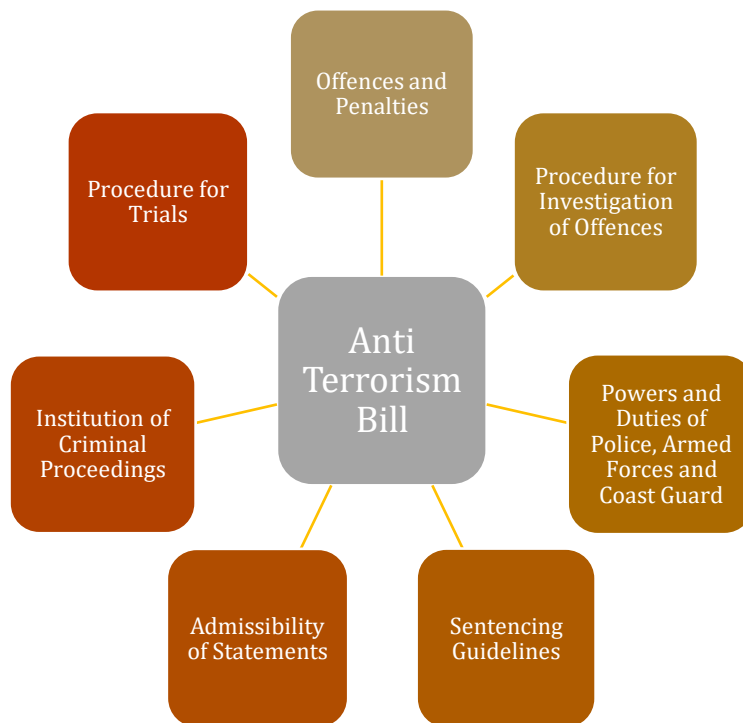
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Q1. What is the 'Anti-Terrorism' Bill?

Initially, the 'Anti-Terrorism' Bill (ATB) was published in the Gazette in March 2023. Due to public backlash, the ATB was withdrawn and published again on the 15th of September 2023. Despite suggestions from various stakeholders, the new version of the ATB contained no substantial changes.

On the 10th of January 2024, the version of the ATB published in September was presented to Parliament by the Minister of Justice.

The ATB provides, among other things, for:

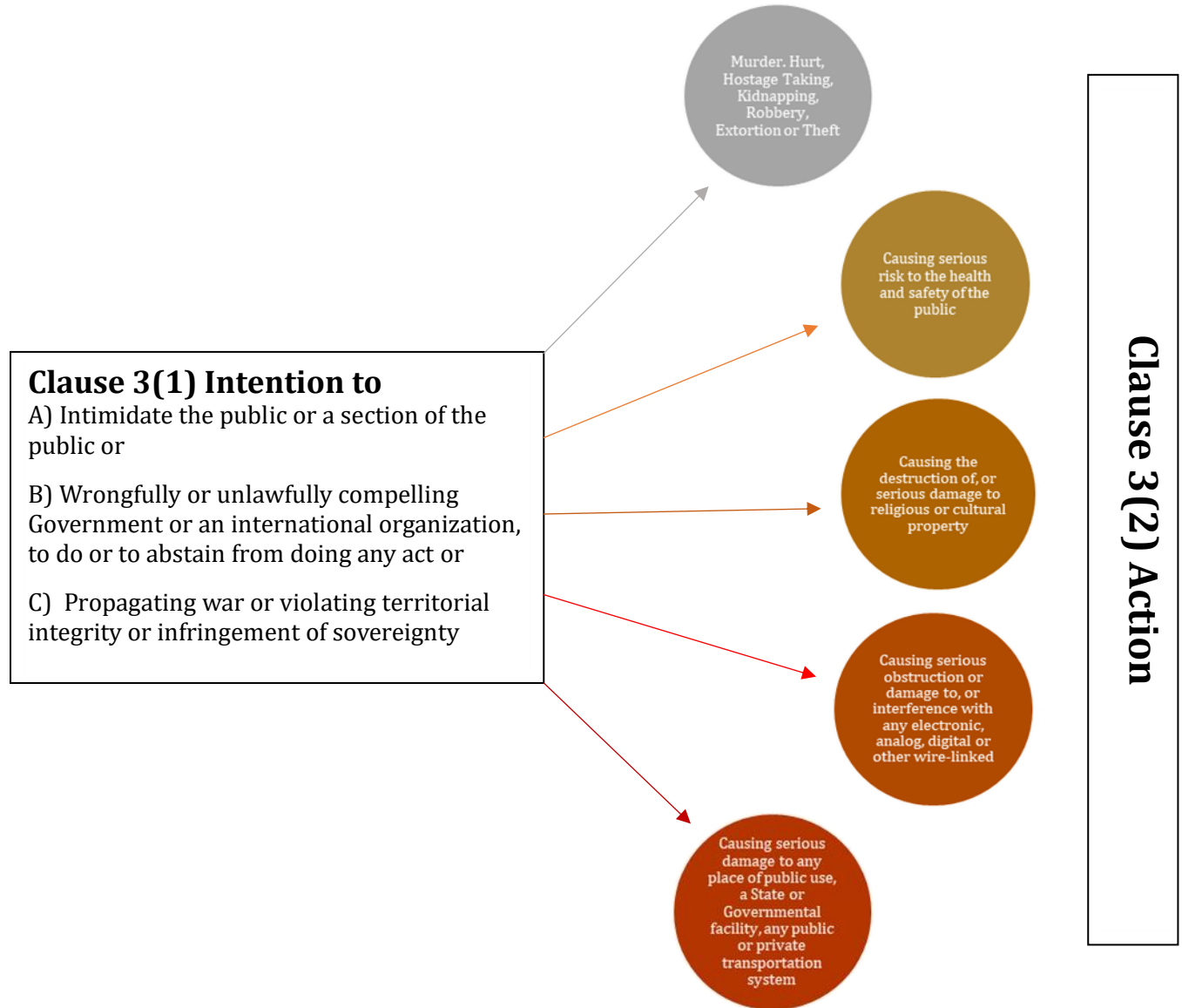


Subsequently, 38 petitions challenging the ATB were filed in the Supreme Court of Sri Lanka on the basis that it was inconsistent with several provisions of the 1978 Constitution of Sri Lanka and infringed the fundamental rights of citizens of Sri Lanka. The special determination of the Supreme Court was delivered on the 20th of February 2024. For more information on this determination refer Questions 8 and 9.

Q2. How is ‘terrorism’ defined within the Anti-Terrorism Bill and why is it problematic?

Internationally, most jurisdictions have faced difficulty in defining the term ‘terrorism’, primarily due to its complex and multi-faceted nature. Such difficulty is captured in Clause 3 of Sri Lanka’s ATB which attempts to define terrorism but ultimately provides an overbroad offence.

The offence of ‘terrorism’ is defined as committing one or more of the acts set out in Clause 3(2) with one or more of the intentions set out in Clause 3(1).



The cumulative effect of Clause 3, is that it provides for an overbroad offense of terrorism which empowers the State to deem many forms of dissent as a terrorist activity and, subsequently, subject suspects to long periods of detention and punishments.

For better understanding, the following hypothetical illustrations could be regarded as 'terrorism' under the Anti-Terrorism Bill:

- ❖ Nurses in the health sector are going on strike to influence the State to increase their salaries. This will be interpreted as terrorism for causing serious risk to the health of the public [Clauses 3(2)(g) and 3(1)(b)].

- ❖ Railway workers on strike sabotage the functioning of the railway by stopping a particular train from running by removing certain mechanisms or instruments vital for the smooth functioning of a specific train. This would amount to terrorism for causing damage to a public transportation system [Clauses 3(2)(e) and 3(1)(b)].
- ❖ There is a demonstration in front of a foreign Embassy protesting a policy of that State, where a demonstrator is not wearing a face mask when wearing a face mask has been mandated by the law. The demonstrator can be arrested for the offence of terrorism in terms of Clauses 3(2)(g) read with Clause 3(1)(a).
- ❖ There is a dispute between two student factions at Sri Lanka Law College. One faction takes a member of the administration of the Law College as a hostage. This can be constituted as a terrorism offence for hostage-taking under the proposed law [Clauses 3(2)(c) and 3(1)(a)].
- ❖ There is a strike at the Sri Lanka Broadcasting Corporation (SLBC) against high taxation by the State. The engineering staff leave the premises which results in disruption of the SLBC radio transmissions. This may constitute terrorism for obstructing electronic or signal transmissions [Clauses 3(2)(j) and 3(1)(a) or (b)].

The Supreme Court's determination on the constitutionality of the ATB has since found that the ambiguity is rife in the definition of 'terrorism' and is therefore unconstitutional. Consequently, for the provision to be enacted by a simple majority in the Parliament of Sri Lanka, a carve-out similar to those seen in other jurisdictions needs to be adopted (refer Page 37 of the Supreme Court Determination). This exemption would be contained in Clause 3(4) of the ATB and, as per the Supreme Court, it should read as follows:

"The fact that a person engages in any protest, advocacy, or dissent, or engages in any strike, lockout or other industrial action, is not by itself, a sufficient basis for inferring that the person –

- (a) is committing an act or an illegal omission with an intention, specified in subsection (1) of Section 3 or*
- (b) intends to cause an outcome specified in subsection (2) of Section 3."*

Q3. Under what circumstances can detention orders be issued under the Anti-Terrorism Bill?

Under Clause 31 of the ATB, the Inspector General of Police (IGP) or any officer not below the rank of Deputy Inspector General of Police (authorised by the IGP) can seek a detention order. This detention order may be granted by the Secretary to the Ministry of the Minister of Defence if he is satisfied with the existence of reasonable grounds to believe that the suspect has committed or "has concerned" in committing an offence under the ATB. Some of the offences are as follows:

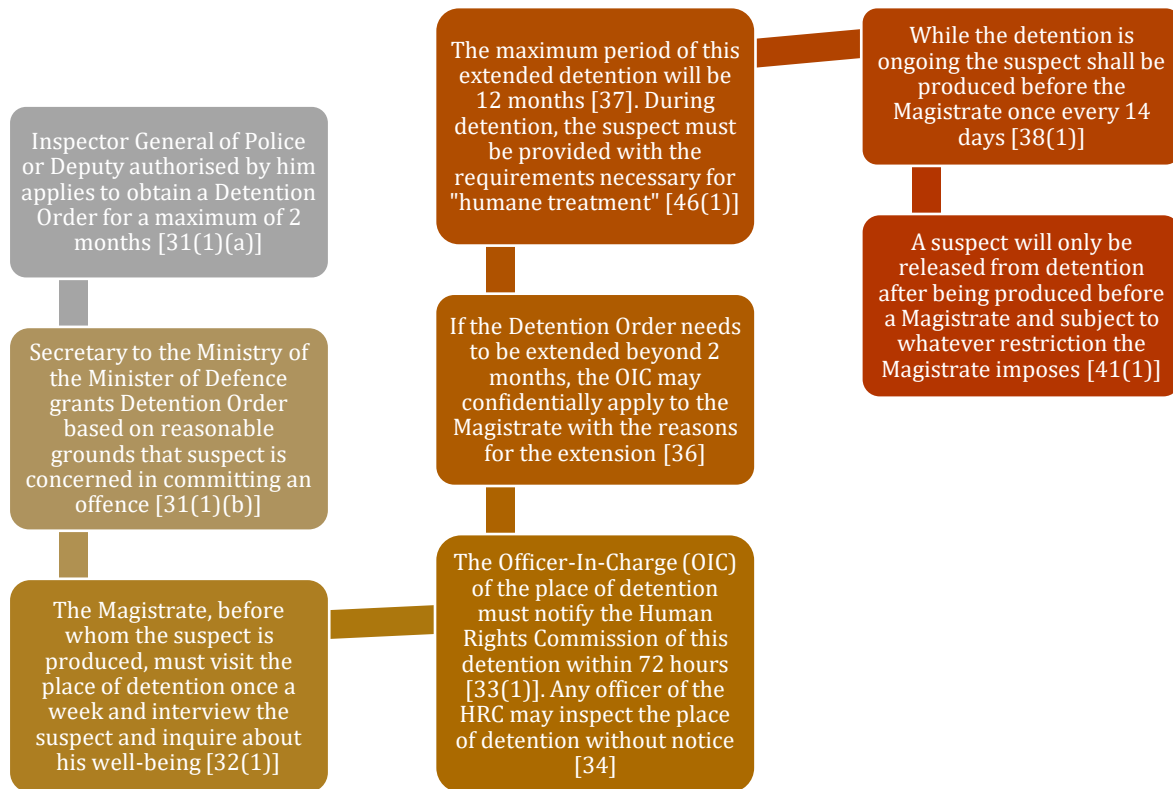


By stating that a person could be subject to detention for being concerned in one of the above offences, citizens of Sri Lanka could be arbitrarily detained for up to 2 months or more for any remote or indirect involvement in the already broad definition of terrorism.

However, the Supreme Court of Sri Lanka has determined that these detention orders are not inconsistent with the Constitution because of oversight by the Magistrate in granting these orders (refer Page 56 of the Supreme Court Determination). This judicial safeguard is viewed by the Court as an improvement upon the existing laws relating to terrorism.

Q4. What procedures are followed by the State in enforcing detention orders?

Various provisions between Clauses 31 to 46 address the duties of various State actors upon the enforcement of detention orders. The following infographic summarises some of those provisions:



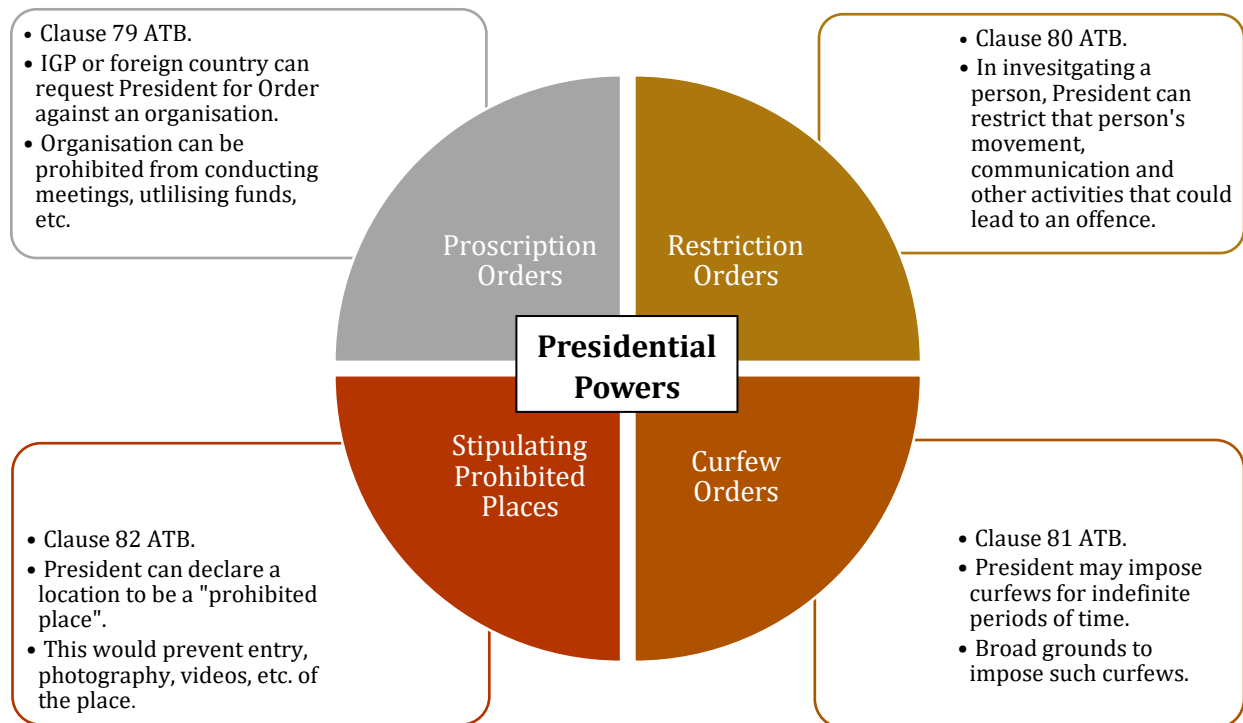
Q5. Does the Anti-Terrorism Bill impose restrictions on a person's access to counsel?

The ATB explains in Clause 42, that Attorneys will have the right to access persons they represent who are remanded or detained under the Act. However, this right is "subject to such conditions as may be prescribed by a regulation made under this Act". These regulations (refer Clause 90 of the ATB) are created by the President of Sri Lanka and consequently, could allow for stringent restrictions on remanded or detained persons' access to qualified counsel.

Notably, on Clause 42, the Supreme Court has identified a discrepancy between the English and Sinhala versions of the ATB, whereby the Sinhala version would only allow access to Attorneys based on enabling regulations made under the ATB (refer Page 59 of the Supreme Court Determination). The Supreme Court has determined that the discrepancy be cured and that the Sinhala version be aligned with the English version of the ATB.

Q6. How are the powers of the Executive President enhanced even further under the Anti-Terrorism Bill?

Continuing a legislative trend in recent times, the Anti-Terrorism Bill enhances the powers of the Executive President of Sri Lanka with insufficient checks and balances in place against such authority. The following are some of the key powers:



Pertinently, as mentioned above, the President can also issue regulations under Clause 90 in pursuance of the goals of the ATB, such as regulations to implement rehabilitation programmes (refer Clause 92).

It is noteworthy that the Supreme Court did not specifically address these clauses in the special determination on the constitutionality of the ATB.

Q7. What are the powers of the police, armed forces and coast guards under the proposed Anti-Terrorism Bill?

The powers bestowed on certain officers under the ATB are extensive. Part IV of the Bill specifies the duties and powers of police officers, members of armed forces and coast guards under the proposed Act but on a broader view of the Bill, police officers are granted various powers. The following infographic highlights some of the key powers of police officers:



The powers of the armed forces and coast guard are also amplified at various parts of the ATB. Some of the key clauses are as follows:

Clauses 19 and 20	Clause 22	Clause 48	Clause 60
<ul style="list-style-type: none"> Permits armed forces and the coast guard to arrest persons without a warrant in specified circumstances. Allows the questioning and search of arrested persons to prevent an offence or to preserve evidence. 	<ul style="list-style-type: none"> Member of armed forces or coast guard may stop and search a vehicle upon 'reasonable suspicion' an offence has been committed. 	<ul style="list-style-type: none"> Members of armed forces or coast guard may take "necessary measures" to prevent the commission of an offence. 	<ul style="list-style-type: none"> To give effect to 'directives', the IGP may obtain the assistance of any member of the armed forces.

Q8. Why did Centre for Policy Alternatives petition the Supreme Court on the Anti-Terrorism Bill infringing citizens fundamental rights in the 1978 Constitution of Sri Lanka and what did the Supreme Court determine?

The powers of the President and the State (in relation to the individual) as a whole will be even greater if the ATB is passed by Members of Parliament. How this will impact the fundamental rights of citizens contained within Articles 10 to 14 of the 1978 Constitution of Sri Lanka in practice remains to be seen.

CPA filed a petition in the Supreme Court of Sri Lanka against the ATB. The relevant fundamental rights, how they may be impugned and the Supreme Court's determination on each such clause are as follows:

Fundamental Rights	Content of Articles	Why CPA Claimed the Article was Infringed	The Supreme Court Determination
Article 11	No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.	<u>Clause 42</u> – The potential to prevent remanded or detained persons from having access to counsel could lead to inhumane treatment at the hands of the State.	There is a discrepancy between the Sinhala and English texts of Clause 42. Unconstitutionality will cease if the textual disparity is remedied.

Article 12(1)	All persons are equal before the law and are entitled to the equal protection of the law.	<u>Clause 3</u> – The vague definition of ‘terrorism’ would lead to arbitrary application which will cause inequality in application.	Clause 3 of the Bill falls foul of Article 12(1) of the Constitution and as a consequence, it is required to be passed with a special majority. The Clause will not be inconsistent if an exemption is enacted similar to Section 5(5) of the New Zealand Terrorism Suppression Act of 2001.
		<u>Clause 31</u> – The overbroad grounds to grant detention orders could be arbitrarily applied and will cause inequality in application.	This does not infringe the Constitution as Magistrate oversight constitutes a sufficient judicial safeguard. Clause 31 may be passed by simple majority in the Parliament of Sri Lanka.
		<u>Clause 42</u> – The potential to prevent remanded or detained persons from having access to counsel could lead to inequality between different persons investigated under the ATB.	The Court observed that there is a discrepancy between the Sinhala and English texts of Clause 42. The unconstitutionality will cease if the textual disparity is remedied.
		<u>Clause 79</u> – The power of the President to impose Proscription Orders against specific organisations would create inequality.	Not specifically addressed by the Supreme Court of Sri Lanka.
		<u>Clause 81</u> – The President’s wide powers to impose curfew orders breach citizen’s right to equality.	Not specifically addressed by the Supreme Court of Sri Lanka.

		<p><u>Clause 82</u> – The President’s wide power to stipulate prohibited places would breach a citizen’s right to equality.</p>	Not specifically addressed by the Supreme Court of Sri Lanka.
		<p><u>Clause 90</u> – The President’s broad powers to create regulations in furtherance of the ATB’s purposes breaches a citizen’s right to equality.</p>	Not specifically addressed by the Supreme Court of Sri Lanka.
Article 13(3)	Any person charged with an offence shall be entitled to be heard, in person or by an Attorney-at-Law, at a fair trial by a competent court.	<p><u>Clause 42</u> – With the potential that regulations may prevent remanded or detained persons from having access to counsel, a person’s right to be heard could be infringed.</p>	There is a discrepancy between the Sinhala and English texts of Clause 42. The unconstitutionality will cease if the textual disparity is remedied.
Article 14(1)	Every citizen is entitled to the freedom of speech and expression, peaceful assembly, association, joining a trade union, manifesting his religion, promoting his culture, movement, etc.	<p><u>Clause 3</u> – The vague definition of ‘terrorism’ resulting in arbitrary detention and arrests would stifle the freedom of expression, movement and a citizen’s right to peaceful assembly.</p>	Clause 3 of the Bill falls foul of Article 12(1) of the Constitution and as a consequence, it is required to be passed with a special majority. The Clause will not be inconsistent if an exemption is enacted similar to Section 5(5) of the New Zealand Terrorism Suppression Act of 2001.
		<p><u>Clause 79</u> – Proscription Orders against organisations would prohibit lobbying for an organization, mobilising bank accounts and even working with such</p>	Not specifically addressed by the Supreme Court of Sri Lanka.

		organisations. This breaches rights to freedom of expression, association, etc.	
		<u>Clause 81</u> – Broad curfew orders would infringe a citizen’s right to freedom of movement.	Not specifically addressed by the Supreme Court of Sri Lanka.
		<u>Clause 82</u> – The State’s ability to stipulate “prohibited places” restrict many citizen’s rights such as the freedom of movement, association, etc.	Not specifically addressed by the Supreme Court of Sri Lanka.

Q9. In light of the recent Supreme Court Determination on the Anti-Terrorism Bill, will the Bill be enacted into law?

The Supreme Court special determination delivered on the 20th of February 2024 has required several amendments to be made to the proposed Anti-Terrorism Bill for it to comply with the 1978 Constitution of Sri Lanka. If these amendments are made by the Parliament, the ATB may be passed by a simple majority and become law.

Once in place, an Anti-Terrorism Act would create a new offence of ‘terrorism’, permitting wide powers to the Executive President, as well as enforcing bodies, such as the police, members of the armed forces and coast guard. The powers listed in the ATB would permit wide grounds for searching, detaining and arresting persons and, through the imposition of regulations by the President, possibly even denial of access to counsel.

How far the Parliament of Sri Lanka will amend the ATB in accordance with the Supreme Court determination remains to be seen.