Poli : Sin

# WHY WE OPPOSE

## The Prevention of Terrorism

(Temporary Provisions)

## Act. No. 48 of 1979


**Batty Weerakoon**
(General Secretary)
*Ceylon Federation of Labour*

# WHY WE OPPOSE

## The Prevention of Terrorism

(Temporary Provisions)

Act, No. 48 of 1979



Batty Weerakoon
(General Secretary)
Civil Rights Movement of Lanka

# Why we condemn the Prevention of Terrorism Act.

The Ceylon Federation of Labour views the surreptitiously drafted and hastily enacted Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, as the latest and the most vicious attempt of the J. R. Jayawardene Government to muzzle all protest of the working class both at a workplace and national level. It has come at a time when the I. M. F., and World Bank dictated policy of the Government has resulted in the people of this country being denied the regular ration of rice, wheat flour, sugar and milk products which they were issued at a fixed price. The hundred per cent devaluation of the rupee has caused a sky-rocketting of all prices including the prices of medicines, school books, clothing and food and all other consumer articles. This has meant a sustained attack on the iving standards of the people. The Government has imposed a wage-freeze, and what little has been given as compensation is a mere morsel in the gaping jaws of inflation.

The Government's election promise of making consumer goods freely and plentifully available has been kept in that this country has become a dumping ground for goods from the West, Japan, Taiwan, Hongkong and Singapore. Employment creation has been minimal and state corporations have been turned into dumping grounds for the unemployed. Middle-East jobs ranging from nannies to mechanics are the only jobs that are spoken of. Development projects have turned into havens for racketeers both local and foreign. Despite the evanescent euphoria in their circles wise men in the government know that the time bomb is ticking.

It is no surprise that the World Bank finds this country the one spot in the Third World that has taken to its recipes without overt protest. The reason for this deceptive calm is to be had in the several steps the J. R. Jayawardene Government has taken to muzzle protest and root out opposition.

1. Within the first few weeks of governmental power the J. R. Jayawardene Government unleashed its fascistic type bands on all work-place level trade union activists. It used State power to ruthlessly suppress trade union and working class protest. It effected a virtual ban on strikes by treating strikes as a vacation of employment. It used police powers to disallow meetings and demonstrations, and it commenced arresting and detaining in custody trade unionists engaged in legitimate activity. The interim report of the I. L. O's Freedom of Association Committee commented on the Government's lack of frankness when it was called upon to answer charges made on these matters to the I. L. O. by this Federation.

2. The Government using its majority in the National State Assembly amended and then replaced the Constitution of the country and established a hybrid Presidential system of government under which the executive, in its coercionary functions, has been totally removed from exposure to the National State Assembly.

Despite these strengthening positions the Government has established for itself, it was unable to go through with legislation that was meant to decimate the trade union movement in this country. This was legislation which the Government was forced to withdraw even after it was introduced in the National State Assembly as a White Paper.

The Prevention of Terrorism Act has been enacted in this context, and especially, in a situation in which the World Bank is bringing added pressure on the Government to fulfil its pledges to the Bank by quickly liquidating what remains of the welfare fringe. There is thus in existence in this country a potential situation of protest which is the outcome of the Government's economic policies and performance. Given this situation the Government sought provocation in the activities of the extremist separatist organization functioning principally in the Jaffna Peninsula, and known as the Liberation Tigers of Tamil Eelam. The Government had already in 1978 enacted legislation for countering the activities of this organization. This was the Proscribing of Liberation Tigers of Tamil Eelam and Other Similar

**Organizations Law, No. 16 of 1978.** Further legislation was enacted about the same time – **Criminal Procedure (Special Provisions) Law, No. 15 of 1978** – designed to amend criminal procedure in matters of custody and bail.

Early in July a state of emergency was declared in Jaffna under the provisions of the **Public Security Ordinance.** It was reasonable to think at the time that the Government did so both to appease Sinhala opinion after the killing of a Police Inspector (Inspector Guruswamy) allegedly by the Tigers Organization, and in anticipation of an escalation of separatist activity by the **Tamil United Liberation Front** (TULF) after it walked out of the **National State Assemly** in protest against a redefinition of district boundaries. It is the considered view of the **Ceylon Federation of Labour** that the declaration of the state of emergency under the **Public Security Ordinance** was sufficient for the Government to assume, through a mere gazetting of regulations, the most far reaching powers imaginable to combat any situation of terrorism or civil commotion.

The only situation of terrorism or civil commotion that faced the Government in July 1979, and in the entire period after the 1977 general elections, was what related to the communal situation. It was thus somewhat puzzling when the daily press reported on the 4th of July 1979 the President, Mr. J. R. Jayawardene's disclosure to the Government Parliamentary Group on the 3rd July that the Government has decided to "introduce legislation to combat terrorism and wipe it out for the betterment of the majority of the people whatever race they may belong to." The initiated certainly had reason to suspect what was intended. But to the rest J. R. Jayawardene's was leger de main. He referred to nothing outside the communal situation. This is how the Government-controlled **Ceylon Daily News** of the 4th July reported him:

> "I have said before and reiterate now that this Government will not permit our motherland to be divided. I do not think any government in the future will change that position," he said.
>
> Mr. Jayawardene said the members of parliament of the TULF group had been treated for two years by the government as though they were members of the government parliamentary party and

their electorates considered for development and appointments in a similar manner.

They had not responded to the hand of friendship that had been held out to them, he said. The Leader of the Opposition, who had been given special privileges by the Government had used his position to criticise the government and the Sinhala people, preach the division of the country though he has taken an oath accepting the unitary constitution; and attempted by himself and with his colleagues when abroad to poison the minds of foreign governments and people against the people of this country in order to prevent foreign aid being given and thus sabotage the country's development programs.

"Their speeches and attitudes have encouraged and helped the terrorists' movement which has murdered in cold blood a number of Sinhalese and Tamil public officers and other innocent citizens", the President said.

The President also said that representations had been made to him by a large number of organizations, religious, political and social, from all parts of the island and by leaders of religious organizations that the Eelam movement should be banned and the TULF proscribed.

"One and all fear that communal passions will be raised and are being raised and may end in blood and conflageration throughout the island. Innocent Tamil people may be harmed because of the compaign of the TULF and its supporters", the President said.

He added; "I must take note of these representations. It is with great difficulty that the members of my cabinet, you the representatives of the people, and I have been able to preserve law and order We intend to do so whatever the provocation we may have to encounter". The President appealed to all to show tolerance and friendship to the vast number of Tamil people living in their midst who are not parties to the propaganda on the TULF and the violent activities.

> "We have to follow the way of peace and friendship and I am sure that that way alone will lead to the achievement of our objective.
>
> Mr. Jayawardene sought the support of the parliamentary group in the course of action they intend to take and through them the support of all law abiding citizens to help the government maintain the unity of Sri Lanka and the welfare of its people irrespective of religion, race, creed or any other consideration."

What is most significant here is that when Mr. J. R. Jayawardene, for the first time (and the only time too) announced his intention to introduce legislation to combat terrorism the only violence he adverted to was that connected with communal and racial feelings. In fact there was no other fear of possible violence he could put across to the country and be believed.

The Prevention of Terrorim Act preserved very studiedly the appearance of being directed against the several acts of terrorism the so called Liberation Tigers are alleged to be engaged in, and about which the overwhelming majority of the people in this country show no doubt. These acts which in fact have occurred are killing and attempted killing of politicians who are treated by the Tigers as collaborators, and of public servants who are engaged in the investigation of these offences, the abduction and kidnapping of witnesses (and at times even their murder), robbery of state banks and other institutions, acts of mischief such as arson and other kinds of sabotage, and the collection and distribution of arms. All these acts have been specifically covered by the Act in its Part I which defines offences. But amongst these offences is also the provision which says that a person who-

> by words either spoken or intended to be read or by signs or by visible representations or otherwise causes or intends to cause commissions 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

shall be guilty of an offence under this Act. (Sec. 2 (1) h).

In this provision - which may be referred to as section 2 (1) h the offences are of two categories:

(a) acts of violence.

(b) acts of religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups.

The "acts of violence" stated here are not confined to such acts of violence as relate to religious, racial or communal disharmony. Also it must be remembered that the following acts of violence directed against the President, Judges and officers of a court of law, members of parliament and local authorities, representatives of foreign governments, members of Presidential Commissions, members of the armed forces, the police force and any other force charged with the maintenance of law and order, jurors and witnesses are made specific offences:

Causing death, kidnapping, abduction, or any other attack or intimidation. These provisions are sections 2 (1) (a) (b) (c) of the Act.

Section 2 (1) (d) and (e) make the robbery of the property of the Government, any department, statutory board, public corporation, bank, co-operative union or co-operative society, or mischief to the property of the said bodies specific offences.

From this it should be clear that the "acts of violence" in section 2 (1) h is intended to cover a different range of acts.

The other features in the offence defined by section 2 (1) h are:

a. For the offence to be complete all that is necessary is the written or spoken word. No further overt act is necessary.

b. No act of violence need in fact be committed, for the mere intention to commit an act of violence is itself the offence.

To these may be added the provisions of section 3 (a) and (b) which states that any person who:

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

b. abets, conspires, attempts, exhorts or incites the commission of an offence

shall be guilty of an offence.

The pinch in these provisions come not at the stage a man is charged in a court of law on any of these charges, even though the trial is to be held, according to the provisions of this law, without the benefit to the accused of certain very salutary provisions in the Criminal Procedure Code and the Evidence Ordinance. The pinch comes much earlier at the stage of investigation and detention, for the Act makes special provisions for the investigation of offences, the detention of suspects and the further imposition of detention and restriction orders on any person believed to be, or suspected to be, connected with any "unlawful activity".

"Unlawful activity", as defined in this Act means any action taken, or act committed, in connection with the commission of any offence under this Act. Thus one sees the long reach of this law. Even in the case of the offences described as the open ended "act of violence" in section 2 (1) h, there is no need for one in fact to commit act of violence for him to come within the reach of investigation and detention. A mere connection with it can, through the definition of "unlawful activity" bring a man within the range of investigation. What is still worse, and perhaps the most cynical piece of it all, is that in the Part II of the Act, which deals with **Investigation of Offences**, a police man is allowed, on his mere **suspicion** that a man is connected with or concerned in any "unlawful activity", to-

a. arrest him without a warrant.

b. hold him in his custody for 72 hours (3 days) and thereafter to have him remanded, without the remanding Magistrate having any discretion in the matter, till the conclusion of the trial.

c. to take the suspect away from the fiscal, to whose custody he has been remanded, and to take him to any place for purposes of intorragation.

d. to take the suspects finger prints and specimens of hand-writing without the intervention of a court.

All these provisions are completely contrary to what has been the law of this country upto this particular enactment. Under the law that prevailed a person could be arrested without a warrant from a magistrate only in a limited range of circumstances known as cognizable offences. Every person so arrested had to be released or produced before a magistrate within 24 hours of the arrest. On such production the magistrate would commit the arrested person to remand only if he is a suspect in a non bailable offence (a very limited range of criminal acts) or if he is satisfied that investigations are not complete and that the remanding of the suspect is necessary in the interim period. The remanding is to the custody of the fiscal who is distinct from the police and once a person is so remanded the police can have access to the suspect only with the permission of the magistrate, and in any case the police, are not permitted to take him away from that custody for the purpose of interrogation. Nor are the police permitted to take a suspect's finger prints etc without the intervention of court.

These were all very salutary and civilized provisions based on respect for the rule of law. The Prevention of Terrorism Act has not only thrown these away as so much lumber but has given sanctity to what the police can obtain as evidence against a suspect even by subjecting the suspect to police violence. The law that prevailed forbade altogether, a Court, from accepting as evidence against an accused a confession or what amounts to a confession made by the accused to a policeman. The Prevention of Terrorism Act specifically states that any statement made to a police officer is admissible in evidence against him whether it be a confession or not and nothwithstanding that the person was or was not in custody at the time, or that it was made during, after or before an investigation.

The function of the confession to a policeman is mentioned here to reveal the extent to which the police clutch can fasten round a man. In fact it is so firm that there is no rule or law to get him out of it.

This in fact is the most dominant characteristic in a Police State. What one should realize is that a man can go through all these procedures, at each stage of which there is a total denial of his liberties, without him finally being charged in a court of law. That is the end to the rule of law.

But the Act does not end here. The President, as Minister, has reserved to himself certain other powers in respect of the life and liberty of a person. These powers are follows:

1. Where he has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, he 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 him. Such period may be extended from time to time for an aggregated period not exceeding eighteen months.

2. He may impose certain prohibitions or restrictions on a person's movements or activities. This too will be for periods of three months at a time up to an aggregate period of eighteen months. He can thus prohibit a person from functioning as an official of a trade union, from offering himself as a candidate at an election to the National State Assembly or any other political or non-political organization.

These orders cannot be called in question in any court of law by way of writ or otherwise.

The Executive has other powers too:

1. No person can publish any thing about the investigation of an offence without the approval in writing by the censoring authority. That means that there will be a total blackout on news about the arrest of any person for the simple reason that any arrest or detention can be made on the pretext of an investigation.

2. Nothing that can be construed an incitement to violence can be published ( even outside Sri Lanka ) without the prior written approval of the censoring authority. Nor can such publications ( which include even a handbill ) be distributed without such approval.

any breach of these injunctions can subject a man to those same earlier mentioned methods of investigation and detention before he is ever brought to the dock in a court.

Sri Lanka has been blessed with a Courts system that is based on the rule of law. Any departure from a strict adherence to the rule of law was hitherto mainly done through special bodies such as the Criminal Justice Commissions. But, said Mr. J. R. Jayawardene, he does not wish the law to operate outside the normal Courts-system. Great cynic that he is he has now changed the methods of the normal Courts-system to suit his new law. One clear example of this is to be seen in the treatment meted out to section 24 of the Evidence Ordinance. That section reads:

> A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat, or promise having reference to the charge against the accused person, proceeding from a person in authority, or proceeding from another person in the presence of a person in authority and with his sanction, and which inducement, threat, or promise is sufficient in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

This refers not to a confession to a police officer because in any case under the Evidence Ordinance a confession to a police officer, no matter under what circumstances, is shut out from proceedings in a court. This refers to confessions made to persons other than police officers, and this is sufficient evidence of the fact that the law has always tended to look with suspicion at all confessions unless it is quite clear that the confession has been freely and voluntarily made. Here is no requirement for the accused to prove that the confession attempted to be used against him in his trial was not voluntarily or freely made. The court on its own motion can come to the conclusion that the confession does not appear to it to have been freely and voluntarily made and for that reason it can consider it irrelevant and shut it out. There are other moral and legal refinements too in this section. Where it is found by the judge that an inducement has been held out he is required to decide on the adequacy of that inducement not on the basis of its possible effect on the abstract "normal man" but on the possible consequences of that inducement on the particular man in the dock.

Section 16 of the Prevention of Terrorism Act makes this particular section stand on its head. It first provides for the admissibility in evidence of statements, whether confessionary or not, made by the accused to a police officer, and goes on to state that this shall be so if it is not irrelevant under section 24 of the Evidence Ordinance. Thereafter it says that the burden of proving that such statement is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant.

One sees again the leger de main - the air respectability through a reference to section 24 of the Evidence Ordinance, and the quiet torpedoing of its practical consequence by putting the burden of proof of the fact of irrelevance on the accused himself. And here comes the rub, for, if it is not apparent to Court that a man going through this special procedure of investigation as outlined here is under the influence of the direst threats how can that fact be proved? But on this matter, God forbid, Court cannot and shall not act on what is apparent to it. It has to be proved.

**Not only is this statement admissible against the accused it is also admissible against a co - accused.** This is a monstrous travesty of the law as it existed upto this enactment. This will mean that the statement (confessionary or not) which accused A has made to the police will be admissible against accused B even though accused B has no opportunity of cross - examining his co - accused in the witness box. The Evidence Ordinance has permitted the sworn testimony of an accomplice to be led against an accused person. Here sworn testimony means only one thing and that is that accomplice gets into the witness box and is subject to cross examination. Even in such circumstances our Courts are obliged by provision in the Evidence Ordinance to act on the basis of the legal presumption that "an accomplice is unworthy of credit, unless he is corroborated in material particulars." This means that his evidence has to pass two tests. Firstly it has to pass the test of the witness. box And even if the witness did come off the witness box unscathed his evidence had to stand the test of being corroborated in material particulars by evidence given from the witness box by other independant witnesses. Section 16 of the Prevention of Terrorism Act is a complete departure from this procedure in that under this

provision the mere statement to the police can be put in evidence. It affects also a further vital provision to which our Courts have always adhered. That is the provision in the Evidence Ordinance which requires that evidence, if to be admissible, must be the testimony from the witnessbox, and that it should be the testimony of a person personally aware of the facts he is testifying to. The only excepiion is the right given to an accused person to give evidence from the dock without being sworn or cross-examined.

We thus have in the Prevention of Terrorism Act the following most objectionable features:

1. The liability of a person to arbitrary arrest and incarceration even though there can finally be no charge on which he could ever be brought to a Court.
2. The facility afforded to the police for fabricating evidence against persons and for the use of such evidence in a Court of law.
3. The deliberate undermining of the respect of the Courts for the rule of law which has been part of the traditions of our Courts.

And these are also the unmistakeable features of a police state. This is what the J. R. Jayawardene Government has strived all these months to establish in this country. This flows from his politics which is complete subservience to neo-imperialism. Well, says Mr. Jayawardene, if we are to play the role of a second Singapore to neo-imperialism we must also give ourselves the political frame-work of a Singapore. Lee Kwan Yew set up his police state as the total counter-insurgency move against Communism. Mr. Jayawardene has done it as the counter terrorist move against Eelamism. Mr. Jayawardene's real quarry was not the Eelam Tiger, which tiger he could have handled equally well solely through Emergency Regulations. His real quarry was the organised worker whom he tried twice before to tame within the last two years but failed. His first attempt was in the anti-worker provisions in the Free Trade Zone Bill - which provisions he finally had to withdraw. His second attempt was the White Paper on Employment which too he had to withdraw. This time he took no chance and gave no time. Hence the secrecy and the haste. He took the extra precaution of timing and chose the hour when he could present it to the country as the most important measure against Liberation Tiger Terrorists. The Liberation Tiger Terrorists was, in fact, only the cover.

27th, August 1979,
457, Union Place, Colombo 2.

Star Press, Ltd.,
Colombo 10.