

CHALLENGES IN THE ENFORCEMENT OF FINANCIAL FRAUD AND WHITE-COLLAR CRIME LAWS: A COMPARATIVE PERSPECTIVE ON INDIA AND SRI LANKA

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Abstract

Financial fraud and white collars are major aspects that pose possible economic security and credibility of any country. In such developing economies like India and Sri Lanka, there are numerous structural and procedural as well as political losses in the implementation of laws against such crimes. This study examines the commonalities and difference in legal and institutional infrastructures of India and Sri Lanka as they address the issue of white-collar crimes and in this study special attention has been paid towards enforcement bottlenecks. It examines major setbacks like political interference, archaic legal systems, institutional corruption, Transnational financial crimes as well as insufficient forensic capacity. The paper ends on a note of suggesting legal and policy change that can enhance institutional capability, promote the relative independence of the prosecutor, and assist regional solution.

Key-words: white-collar crime, financial fraud, legal prosecution, India, Sri-Lanka, economic offences, anti-corruption legislative measures, cross-style comparative law.

Introduction

White-collar crime and financial fraud are some of the most noteworthy legal and economic issues in the contemporary world that is globalized and intertwined to technology to the extent that we can hardly imagine our lives without it. In contrast to the conventional criminal activity, white-collar crimes are normally perpetrated by members of authority or trust-worthy individuals, like corporate executives, government officials, and professionals, and involves the use of complex and sometimes volatile financial systems. These offences such as embezzlement, bribery, money laundering, corporate fraud and insider trafficking have not only led to large quantum of economic loss but also create distrust in people towards the authorities, they also tamper with the rule of law and cannot contribute to the development of any emerging economy.

South Asian countries sharing a colonial legal heritage and developing economic structure namely India and Sri Lanka are encountering increasing challenges in the fields of detection, investigation, and prosecution of white-collar crimes. Although both nations have implemented a range of

legislations and developed special agencies to deal with the financial crime, it is burdened with the problems of political influence, procedural ineffectiveness, corruption of institutions, lack of professionalism, and obsolete legal system. Moreover, financial crimes are becoming more international, and this creates extra challenges to national legal frameworks that are not necessarily prepared to collaborate across borders or collect digital evidence.

The present paper will attempt to offer a comparative account of the issues experienced by the two states of India and Sri Lanka in the implementation of laws of financial fraud and white-collar crime. It compares and contrasts the strengths and weaknesses of the legal and institutional frameworks of each country, what the common barriers to enforcement are, and recommends the necessary reform with respect to the country, in order to foster increased transparency, efficiency, and accountability. Having taken the perspective of comparison, this paper underscores the fact that regional cooperation, institutional independence, and legal modernization can be a determining factor in enhancing the war against economic crime in South Asia.

One of the essential objectives of the research will be determining and assessing the most critical problems in enforcement that violate the effectiveness of anti-fraud and anti-corruption legislature. These are matters like lack of institutional capacity, corruption among the law enforcement agencies, delays during the procedure, failure to coordinate the regulatory and investigative authorities, difficulty presented by increasing technology and jurisdiction issues in terms of transnational crime. Using comparative research, the paper aims at evaluating the similarities and differences in the response of India and Sri Lanka to such enforcement issues with consideration to the political, legal and socio-economic determinants.

In addition, the research exposes the landmark case laws and the trend of enforcement with the aim of showing how the theoretical provisions of the law are actually applied with significant differences emerging between the law and enforcement. Thereby, this paper intends to provide the readers with realistic proposals of reform based on the improvement of transparency, effectiveness, and accountability following its enforcement of financial crimes. Such recommendations are targeted at legislative enhancements, reinforcement of institutions, collaboration with international partners, and the combination of technological instruments in the process of investigation and prosecution.

Finally, the study aims at contributing to the academic and policy debate by coming with a comprehensive, cross-national analysis that might guide changes in the law and institutions of the two nations.

The discussed topic investigates the dynamic and confusing problems that India and Sri Lanka experience when trying to implement laws governing financial fraud or white-collar crimes. White-collar crimes like corruption, corporate fraud, embezzlement, programs in analysis and marketing form of inside program trading, and money laundering have become very technical and frequently incorporate digital systems and international connections.

There are several laws that govern enforcement practices in India and they include the Indian Penal Code, the Prevention of Corruption Act, the Companies Act and the Prevention of Money Laundering Act (PMLA). On the other hand, Sri Lanka imposes financial crime in form of legislation such as Bribery Act, Money Laundering Act and the Penal Code. But in both states, it is quite common to see the enforcement compromised by systemic challenges, which include inability to investigate, slow processes, politics, and insufficient coordination amongst regulatory bodies.

A look is also given to the institutional failures in implementation, the ineffective functioning of the enforcement agency like the Enforcement Directorate (ED) of India and Commission to Investigate Allegations of Bribery or Corruption (CIABOC) in Sri Lanka. A flaw in prosecuting high-profile financial criminals is further hampered by legal loopholes, laws that are many years old, and lack of international cooperation.

The comparative viewpoint exposes the similarity in the inertia of the bureaucratic system in different countries, resource limitations and a powerful elite in any country and the contrast displayed is seen in the structure of regulatory institutions and the depth of legal changes launched.

Finally, the paper highlights how legal modernization, better institutional powers, and cooperation internationally are important in the fight against financial fraud and white-collar crime in both states.

Literature Review

The academic debate on the subject of financial fraud and white-collar crime enforcement within South Asia and specifically in India and Sri Lanka has been developed over the

past few years on the back of growing prominence of white-collar crimes, well-known corporate scandals and abject failures on the part of the government in regulatory quality control. In this literature review, the study describes the current scholarly works, legal analysis, as well as empirical evidence to provide a background to the issue of enforcement of financial fraud and white-collar crime laws in the two jurisdictions.

1. Foundational Principles of Definitions and Theories

The most iconic definition of white-collar crime was proffered by the man who coined and named this term, Sutherland (1949): offenses committed by high-social-status persons as part of their work. His work formed the precursor of subsequent works that have looked at effective enforcement in terms of the societal and institutional privilege. Scholars like Friedrichs (2010) further widened this definition by incorporating corporate, state and financial malpractices.

Scholars in India such as B. B. Pande and K. D. Gaur point out the difficulty of separating white-collar crime and ordinary crime because of the white-collar crime being non-violent crime of paper trail and the fact that most white-collar crimes are embedded within the institutional power structure. Gunawardena (2017) and the Institute of Policy Studies have documented the fluidity of definitions and absence of statutory precision, that suffers prosecutorial consistency in the government of Sri Lanka.

2. Institutional and Regulatory Frameworks

India According to the literature, there is a disjointed enforcement structure in India, consisting of various bodies like the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), Serious Fraud Investigation Office (SFIO), and the Securities and Exchange Board of India (SEBI). As noted by the scholars, such as Chaturvedi (2021) and Anand (2020), jurisdiction overlaps also frequently lead to procedural stalls and turf wars.

Research projects on issues of underfunding of enforcement agencies in Sri Lanka are reported to say there is a lack of funds to fund enforcement agencies such as the Financial Intelligence Unit (

FIU) and the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) (Wickramasinghe, 2018; Fernando, 2020). Other international oversight groups such as IMF and FATF expressed their notations on how Sri Lanka has poor regulatory enforcement and known politically driven prosecutions.

3. Problematic Enforcement and the Loopholes in the Law

In both the countries, the challenges that are found in the field of enforcement in the literature are always as follows:

- **Slow justice systems:** The Indian judicial system is under tremendous backlogs and the trials of white-collar crimes take years to be completed. The Law Commission of India (Report No. 245, 2014) makes similar statements.
- **Underachieving conviction rates:** According to empirical research conducted by National Crime Records Bureau (NCRB) in India, the conviction rates of financial frauds are very low. Slightly similar trends are also reported in Sri Lanka by the Department of Census and Statistics.
- **Political interference:** Surveys carried out by Transparency International and Human Rights Watch report the interference of the prosecutorial procedures especially in Sri Lanka where most high profile trials are not held because of political instabilities or manipulations.
- **Absence of forensic and digital:** There is no forensic and computer know-how as the crimes become ever more sophisticated with India and Sri Lanka not keeping up in terms of cyber forensic capabilities and expertise, according to Singh (2020) and Samarasinghe (2021).

4. Global and Cross-national Analysis

The literature is also based on comparative frameworks especially in UK, USA and Singapore. A responsive form of regulation entailing a mix of persuasion and sanctions was proposed by Braithwaite (1985). Over broadness and interstitially of the laws on anti-money laundering laws as applied in India have been criticized by academics (e.g., Dhawan 2021), although those concerns were raised by the courts. The works of literature in Sri Lanka support the change of the Singapore Corrupt Practices Investigation Bureau (CPIB) in the form of efficiency and independent of it (Perera, 2019).

5. New Reforms and Policies Recommendation

Researchers urge establishment of a single enforcing body or to a minimum a marked inter-agency coordination. According to Gupta (2023), he suggests the involvement of special courts in cases involving financial crimes to make the process faster. In case of Sri Lanka, instead, Wijesekera (2022) offers a system of the wide-ranged statutory reforms, capacity-building programs, and increased compliance with international standards of anti-corruption.

Literature Gap Summary

Although an increasing body of literature exists, such research has not been conducted into the nature of enforcement between India and Sri Lanka in particular. Most of the works are domestic in their area of extent and descriptive. Also, very little empirical scientific work has been done to quantitatively evaluate the effect of enforcement failure on economic and indication of public trust..

Conceptual Overview of White-Collar Crime and Financial fraud

White-collar crime is widely defined as violence-free acts of crime that are either of a financial nature or one that is perpetuated through positions of trust and powers of an individual or an organization. They are involving lying, secrecy, or breaking trust and cannot be limited to the physical force or violence. More typical are embezzlements, insider trading, bribery, tax avoidances, and corporate fraud.

Financial fraud is a type of white-collar crime that is characterized by deceptive financial activities that aim at achieving some gain either at an individual or institutional level. Among the activities includes accounting fraud, securities fraud, Ponzi schemes and identity theft. This type of fraud undermines the stability of any economy and destroys the trust of investors as well as the integrity of the financial systems. White-collar crimes and financial fraud are hard to trace and capture due to their complex and hidden natures and the social stature of the offenders. There is need of stronger regulatory frameworks, corporate governance and forensic accounting to prevent and tackle such crimes.

White-collar crime is a non-violent and monetarily motivated crime by an individual(s), business or professionals engaged in government work and holding trusted and influential positions. It was

formulated as a label by the American sociologist Edwin H. Sutherland in 1939 and described by him as a crime that a person of respectability and high social standing commits in the line of his/her job. Those crimes where the perpetrator is motivated by honesty, secrecy, or breach of trust and not reliant on the use or threat thereof of physical power or violence are the crimes.

White-collar crimes refer to a labyrinth of crimes, most of which include embezzling of funds, insider trading, bribery, taxation crimes, money laundering crimes, cybercrime, and most notably, financial fraud. The reason behind the consideration of this type of crime as especially harmful is that such crimes erode the confidence in the institutions, manipulate the markets, and cause a significant financial loss.

Financial fraud is an element of white-collar crime which entails deliberate use of deception to acquire money. It comprises of fraudulent accounting, false financial reporting, Ponzi schemes, credit card fraud and securities fraud. It normally is steeped in some sort of schemes that only have a thorough comprehension of financial structures and legal ways out of various processes, which are more time-consuming to find out, and thus difficult to go after.

The crimes tend to take advantage of weaknesses in the systems and are not easy to monitor because of the way they are managed. The implication of white-collar crimes is far-reaching such as economic unsteadiness, investor loss of confidence, and institutional credibility diminishment.

The increasing severity of white-collar crimes, not only in India but also in the UK and other countries of the world, has been noted by the governments and legal systems all over the world and the severity of regulations has been intensified. As an example, in India, the laws like Prevention of Corruption Act, 1988, Companies Act, 2013, and Prevention of Money Laundering Act, 2002 are among the main legal instruments to fight financial crime in the country. Legislation including the Fraud Act 2006, the Bribery Act 2010 and corporate liability in Economic Crime and Corporate Transparency Act 2023 is an important enforcement tool in the UK. Accordingly, white-collar crime and financial frauds are the burning existing problems of the contemporary globalized economy, which need comprehensive and operating legal, regulatory, and technical solutions. Conceptual Overview of White-Collar Crime and Financial Fraud plays an important role in the determination of the theoretical basis of the study. Its main role is to indicate and describe

the key ideas underlying the whole discourse of financial criminality, especially in the framework of the economic and corporate governance. In introducing this conceptual overview, the paper seeks to satisfy itself that the readers get a clear and concise idea of what is meant by white-collar crime and financial fraud which are two definitions which are used interchangeably although they have different meanings and implications as far as the law is concerned.

White-collar crime is a financial motivated crime that tends not to involve violence and which is committed by individuals, businesses, or government officials in the position of trust. Some of these crimes are embezzlement, bribery, money laundering, tax evasion, corporate fraud, regulatory violations and so above. A form of white-collar crime is financial fraud, which deals specifically with the deceitful monetary gains of intentional misrepresentation, including; Ponzi schemes, fraud related to securities, identity theft, and bank fraud. This part of the paper will expound on the difference between these crimes in relation to the traditional kind of crime in methodology, offender characteristic, influence in society, and difficulty of investigations. The background history of the term white-collar crime, which was originally introduced by a sociologist Edwin Sutherland, who paid special attention to the influence of power, privilege and occupation status in crime, is examined in the conceptual overview. It takes a look at the evolution of these crimes to meet the technological challenges of modernity, globalization and the sophistication of the financial markets. The given contextual background aids in demonstrating the increasing significance of the white-collar crime in the contemporary legal context and proves the relevance of the research of the problem of the adverse enforcement.

Also, this part is a description of economic and societal impacts of white-collar crime and financial fraud. Whereas individual citizens are normally victims of the street crimes, white-collar crimes may spread widely and hurt the economy causing a loss of billions of dollars to national economies damaging investor confidence, market distortions, and causing a loss of trust to our institutions in the society. Through these dimensions, the conceptual overview does not only lay out what the subject matter is but it also renders the purpose of serious legal and institutional interventions capable of preventing and punishing such offences. In short, this headline attempts to do this by defining the main concepts of the rest of the research in a clear, comprehensive and analytical way. It sets the reader ready to the further discussion of the legal discourses and enforcement difficulties, as well as the comparative outlook presented in the rest of the paper.

Legal Frameworks in India and Sri Lanka and Relevant case Laws

White-collar crime and financial fraud legislations in India and Sri Lanka are influenced by colonial legal history and dynamic socio-economic issues and can be characterized by lack of comprehensive graphic organizational approach. In India, economic offences are covered through various legislations, one of which is the Indian Penal Code, 1860, which covers cheating (Sections 415-420), criminal breach of trust (Sections 405-409). The celebrated Dalma case *R. K. Dalmia v. In the case of Delhi Administration* (AIR 1962 SC 1821) the definition of white-collar crimes under IPC was extended with an already established precedent of judicial acknowledgment to the existence of economic crimes. Acts such as the Prevention of Corruption Act of 1988 brought amendments in 2018 address corruption among the heads of government, whereas the Companies Act, 2013 or specifically the provisions in Section 447 through 458 address corporate fraud, insider trading and other staff misconduct. In *CBI v. In Ramesh Gelli* (2016) 3 SCC 788 the Supreme Court strengthened the position regarding the liability of bank officials at the level of private banks under these laws. An important tool is also the Prevention of Money Laundering Act, 2002 (PMLA) which empowers the Enforcement Directorate to take action against the laundering of crime proceeds. *Nikesh Tarachand Shah v. In Union of India* (2017) 11 SCC 1 the supreme court has reiterated the importance that stringent bail conditions must be balanced with the rights provided under PMLA. Moreover, cyber fraud and the issue of data breaches are covered by Information Technology Act, 2000, that concerns the cyberspace aspect of white-collar crime.

The legal framework in Sri Lanka reflects such initiatives but with some influences of the Roman- Dutch law and English common law. The Penal Code of 1883 addresses those crimes including cheating and breach of trust whereas the Bribery Act, No. 11 of 1954, addresses the crime of corruption and is enforced by Commission to Investigate Allegations of Bribery or Corruption (CIABOC). The Money Laundering Act, No. 5 of 2006, and the Financial Transactions Reporting Act, No. 6 of 2006 enhance financial transparency, and provide suspicious transaction reporting, that is monitored by the Financial Intelligence Unit (FIU). Offences Against Public Property Act, No. 12 of 1982 introduces another scheme of responsibility by the state personnel. Among other prominent examples, one may refer to *Attorney General v. Udawatte Nandana* (SC Appeal 32/2010) in which a prominent individual was convicted of misappropriation, and *CIABOC v. According to Johnston Fernando*, it deals with political corruption on a high

level. In comparison with other regulators, India has a wider institutional framework, which comprises the Central Bureau of Investigation (CBI), Enforcement Directorate (ED), and Serious Fraud Investigation Office (SFIO) which, despite their scope, tend to become redundant in terms of operations. The central agencies of enforcing in Sri Lanka, such as; CIABOC and FIU, are more centralized yet their limitations tend to criticize them on poor resources and political influence. These two countries experience greater pressure of cyber facilitated fraud, international money laundering, and is based on the globalization of economic fraud. The changes in their legal systems are still in progress as they are being reorganized to work on better mechanisms to implement laws, efficiency in the judiciary system and consider international collaborations particularly in the digital era.

Key Enforcement Problems

Although both India and Sri Lanka have in place some very elaborate legal frameworks that aim to curb financial fraud and white-collar crime, there is a serious issue of lack of enforcement in most of the cases. Most of them are highly sophisticated, transnational, and perpetrated by socially, politically, or economic powerful people. The important enforcement issues in both jurisdictions are discussed as below.

1. Complicated and Technicality of Financial Crimes-

The white collar crimes like embezzlement, money laundering, secured fraud etc. are very technical and it is hard to detect and investigate them. Such offenses are usually associated with cross-border trades, online platforms, and complicated business models that would conceal the identity of the frauds and the source of illegal proceeds.

2. Poor Investigative Material Resources and Know-How-

It is common to find law enforcement agencies in India and Sri Lanka ill equipped with specialized skills and tools needed to deal with cases involving financial crimes. In an example, the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED) in India have been criticized of the delays in handling high profile cases on account of resource limitations . Sri Lankan Medical intelligence unit (EIU) and criminal investigation unit (CID), on the other hand, are logistically and capacity-wise limited and cannot prosecute or put people on trial in a timely manner .

3. Interference and Corruption in Politics-

The biggest barrier to good enforcement is the political interference. Issues of influential persons in both countries who have been involved in such white color crimes escaping the legal justice system because of their ties have arisen. In India, the cases of Vijay Mallya and Nirav Modi show that major criminal offenders usually get away with the law with the help of political loop holes. Sri Lanka had seen such criticisms following the bond scam that had rocked the Central Bank in 2015 with senior political leaders being accused of engineering the fraud.

4. Hijacking of the Judicial Process-

The backlog in either jurisdiction is a fact facing the judicial system. Millions of cases are pending in the Indian judicial system, and it takes years to get the case of economic crimes adjudicated. The cases of white-collar crimes have led to lack of confidence between the judicial system and the people in Sri Lanka. This mostly leads to lengthy trials, where major pieces of information could be misplaced or witnesses become untraceable.

5. Poor Whistleblower Protection-

Whistleblowers are very essential in uncovering financial frauds. Nonetheless, there are insufficient plans of protecting the whistleblowers in India as well as Sri Lanka. Despite the Whistle Blowers Protection Act, 2014 enacted in India, the same has failed to take effect. Sri Lanka does not have a comprehensive policy of protecting whistle blowers and this discourages whistle blowers to blow the whistle because they fear retribution .

6. Inter-Agency/Cross-Border inability to coordinate-

Financial crimes are normally cross boundary and so good coordination is needed between local and international law enforcers. In the two countries, there is poor inter-agency coordination and bureaucracies are a hindrance to the sharing of information in time. International cooperation tools, mutual legal assistance treaties (MLATs), are overtaken or not totally used because of the problems to get the cooperation of foreign state bureaucracies. There are a plethora of multi-faceted and inter-related challenges that hamper the effective use of the financial fraud and white-collar crime regulations in India and Sri Lanka in the detection, investigation, prosecution, and prevention of such crimes in those countries. Such crimes which are perpetuated by those in a position of trust

and authority (corporate executives, public officials, or professionals) are very sophisticated and disguised through intricate financial structures, and quite hard to discover. The technicality and the level of difficulty posed by white-collar crimes is among the greatest challenges. These crimes differ in the way they are committed unlike common street crime which is executed by use of tricks and tricks of accounting manipulation, cyber fraud, and offshore transactions as opposed to traditional street crimes, special skills are required to detect frauds, trace evidence, perform financial audits, and conduct digital investigations. Nevertheless, most police departments in both nations do not have the skills, facilities, and materials needed to investigate such crimes.

There is also fragmentation of institutions and duplication of authority which makes enforcement even more challenging. In India as well as Sri Lanka, various agencies are charged with the mandate of dealing with financial crimes i.e. the CBI, ED, FIU, SEBI and Anti-Corruption Commissions although in most cases, there is a duplication of mandates, resulting in confusion and delays and lack of coordination. This dispersal enables the offenders to take advantage of the loopholes in the law and procedures, hence poor outcomes in enforcing the law. To make matters worse, there exists a lack of sufficient investigative and forensic capability of available institutions. The majority of agencies lack modern tools and technical personnel to process complicated financial information or to reveal digital evidence. Therefore, a lot of the investigations are long winded, unfinished or cannot lead to successful convictions.

The problem of judicial backlogs, and procedural delays is another key issue. Backlogged court cases plague the courts in the two countries and cases on financial crimes which are usually under the general law of economic offences tend to have delays, adjournments, and procedural hindrances. This is further compounded by the absence of special courts or 'fast-tracks' to deal with financial crimes thereby making the process slow and the rates of convictions low and resulting into poor deterrence. Another threat of unfair and impartial enforcement is the political intervention and corruption in institutions and organizations of investigation and prosecution. Important cases that involve people of political interest are readily delayed, watered down, or dropped under duress and serve as a weak point of faith in the justice system and open the society to impunity. The issues of cross-border enforcement apply especially to cases where international banking systems (such as those promoting shell companies) are involved and where the enforcement registers offshore assets. Transnational crimes are very hard to prosecute since there

is no powerful systems through which mutual legal assistance can be used, international co-operation has been weak and there is a difference in legal standards between jurisdictions. The slow process of access to evidence or the imposition of an international freeze against overseas countries causes a significant hindrance. Further on, lack of adequate laws protecting whistleblowers also worsens the detection process. Whistleblowers are usually afraid to blow the whistle in fear of retaliation, absence of legal protection, and rudimentary institutional protection.

The enforcement is also hampered by the willingness of the citizens and the understanding of finance. Most people, particularly in rural/illiterate regions, become victims of financial scams, such as Ponzi or phishing schemes, and then do not report it either because they have no idea how to chain the practice or fear law enforcement. Underreporting minimizes the recognition of such criminality and does not permit shape on the systemic level. Also, absence of good asset recovery systems makes stolen or misappropriated assets not recovered. Although legally, there is the facility of confiscation and repatriation, the bureaucratic delay, lack of coordination and poor international assistance is the cause of ineffective recovery and the victims are not compensated and the criminals get to keep the ill-gotten money.

These all amount to low conviction rates on financial fraud and white-collar offenses and lack of trust among the people meaning and watering down of the deterrence factor by the law itself. Until such enforcement issues are addressed by making legal amendments, institutional advancement, technology updating, and international cooperation, the laws against financial crimes in India and Sri Lanka will still most likely not reach much success. It is, therefore, imperative to strengthen mechanisms of enforcing laws in order to check economic integrity, maintain rule of law and maintain accountability in the governance of both the society and the corporations.

Comparative Perspective: Similarities and Divergences

India and Sri Lanka do have a common heritage of colonial law derived in the tradition of British common law and that has brought a great impact in the criminal justice systems of both countries, such as in the way of handling financial fraud and white-collar crime. Prevention of Corruption Act 1988 in India and Bribery Act 1954 in Sri Lanka are among the main laws which have been adopted by both nations as the key anti-corruption and economic crime statutes. These legal systems seek to punish cases of bribery and

embezzlement and abuse of office and have common ideas on law based on their post-colonial systems of governance. But there have been huge deviations on their way of development and the ability to enforce the law. Over the years, India has revised its statutory arsenal to combat white-collar crimes of the 21st century such as online fraud, insider trading, and cross-border money laundering, among others, using laws such as Prevention of Money Laundering Act 2002, Companies Act 2013, and Information Technology Act 2000. Sri Lanka on the other hand has a slower rate of development in its legal system including the whistleblower protection and cyber-enabled financial crimes not having their own specific laws.

Institutionally, the two countries have established special agencies in order to address financial crimes. India has the structure of the Central Bureau of Investigation (CBI), the Enforcement Directorate (ED), the Financial Intelligence Unit (FIU-IND), the Securities and Exchange Board of India (SEBI) and the supervisory bodies such as the Lokpal. The institutional structure in Sri Lanka is comprised of the commission to investigate allegations of bribery or corruption (CIABOC), securities and exchange commission (SEC) and the financial intelligence unit of central bank. However, due to structural similarities, the enforcement bodies in India enjoy a better independence and larger resources availability. As an example, the CBI is governed by the Delhi Special Police Establishment Act and points to the courts in most of the cases dealing with corruption, unlike CIABOC, which is under the direct command of the President in Sri Lanka, questioning its independence .

There is also a great difference in the way judicial responses are met to financial crimes. The role of the judiciary in supervision of investigation and the extension of anti-corruption jurisprudence is proactive in India. The most notable of these is the case of *Vineet Narain v Union of India* where the Supreme Court ordered structural changes so as to insulate investigating agencies against political influence . The Sri Lankan judiciary on the contrary has taken a more conservative stance in cases of political corruption or economic offence. White-collar crime cases have fewer precedents of judicial activism, and the courts are seen to be easily influenced by politics . India too has established infrastructures to promote transparency and accountability to the people by enacting the Right to Information Act 2005, by which Government information is available to a citizen. When added to the Whistle Blowers Protection Act 2014, though not adequately implemented, these laws create an environment whereby the civil society and the media

can serve as a watchdog. This has resulted in the exposure of scandals of huge proportions like the 2G spectrum scam and the coal allocation case . In comparison, the situation in Sri Lanka is worse where there is no dedicated law protecting whistleblowers, and civil servants are subject to institutional impediments and fear of the reprisals when disclosing corruption. The regulatory constraints and politicians applying pressures on media houses further limit investigative journalism and public accountability initiatives.

Otherwise, on the international level, India as well as Sri Lanka are members of the United Nations Convention against Corruption (UNCAC) and the regional centers conforming to the Financial Action Task Force (FATF). Nevertheless, India has put in place a wider network of Mutual Legal Assistance Treaties (MLATs) and taken an effective advantage of them in going after financial offenders across borders. The past record of extradition cases of personals such as Vijay Mallya and Nirav Modi reflects the increasing capability of India to deal with the transnational financial crimes . The participation of Sri Lanka at the FATF system is not much, and critics have accused it of failing to adhere to the international standards of anti-money laundering practices.

Nevertheless, there have been these developments, but the two countries still experience lack of conviction in economic crimes because there are elaborate evidence requirements, congestion of the courts, and even political interference. The efforts being made by ED and Debt Recovery Tribunals recently in India have resulted in partial recovery of assets in high-level instances; however, there is still a delay in the prosecution process which slows down justice delivery. Sri Lanka has experienced decline in successful prosecution in major scandals where prosecution of major scandals like the 2015 Central Bank bond scam have been lengthy and accountability weak which ultimately damaged the integrity of the system in the eyes of the people.

Overall, despite structural and legal similarities in seeking to resolve white-collar crime in India and Sri Lanka, the enforcement results in both countries have little in common due to distinctive disparities caused by capabilities of the institution, judiciary independence, civil society involvement, and political interference. The legal system in India is more active and less centralized and the public and the judicial control are higher compared with that prevailing in Sri Lanka which is hampered by its limited independence of the enforcement bodies and low levels of transparency. In a bid to promote the rule of law and enhance accountability, both countries need to finance the process of making institutional

independence, the ability to protect whistleblowers, and the freedom of the judiciary to run without political interference.

Reform Recommendations

The cost of providing solutions to financial fraud and white-collar crime in India and Sri Lanka requires the whole package of legal and institutional changes. Among the top notch requirements is the independence of law enforcement agencies. In India too, the Central Bureau of Investigation (CBI) and Enforcement Directorate (ED) has been accused of operating under great political pressure, discrediting them. An appointment and operation of the senior officials must have at hand the protection of the fixed tenure, followed by a parliamentary committee. In a similar manner, the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) in Sri Lanka is influenced by the executive, undermining its work independence. To ensure that the people regain confidence, structural changes are requisite to instill the independent appointments process through a judicial or bipartisan process.

The other area of critical need of reform is whistling blower protection. India lacked operating rules and did not possess an institutional infrastructure to enforce the Whistle Blowers Protection Act 2014 which therefore remained inactive. The legislation has to be amended by provisions of privacy, exception to criminal liability, and governmental structures of redressal at appropriate levels. Sri Lanka has no all-inclusive law on protecting whistleblowers and thus the civil society activists and the officials of the state are vulnerable to reprisal. At least, passing a specific, international-compliant law, like the model law on whistleblower protection provided by the UNODC, would make it much easier to detect and prevent white-collar crime.

One issue that is continuously present in the two jurisdictions is judicial delay especially in cases of economic offences where specialized skill sets are needed. Specific economic offence courts should be a need in order to reduce the prosecution process and make the courts more efficient. This is operation sable in India either through the Companies Act 2013, PMLA 2002 or through the use of fast track courts as proposed in the Law commission. Sri Lanka can also have specialized benches within the High Court that will specialize in corruption cases moved by CIABOC. Moreover, the training of judges on financial and cyber-crime should be made institutional so that there is an informed adjudication. The necessity to modernize enforcement capacity can hardly be overestimated. India and Sri Lanka should make investment in financial forensic

technology, blockchain monitoring solutions, and data analytics platforms to identify intricate chains of financial flows. Incorporation of the digital evidence management systems and the inter-agency databases will facilitate quicker investigations. In India this can be facilitated with further budgetary provisions of the ED, SFIO, and FIU-IND. In Sri Lanka, forensic accounting and cyber investigations skills may be developed through capacity building programs that are facilitated by UNCAC and UNODC technical assistance.

Transparency mechanism to the society needs to be reformed as well. The Right to Information Act 2005 of India has played a crucial role in publicizing all the corruption in the country but a big percentage of anti-corruption agencies are not completely obedient to give information in due time. The ED, SEBI and SFIO should also be required to proactively publish enforcement figures, the status of investigations and recovery of the assets. The country of Sri Lanka needs to extend its RTI to cover CIABOC and financial regulators to its own RTI regime. The public confidence and civil checks will be strengthened by the publication of regular statistics of enforcement and audit reports.

It is important to enhance international relations, particularly in relation to internationalizes which are attributable to cross-border financial fraud. There are more than 40 ratified Mutual Legal Assistance Treaties (MLATs) signed by India but their enforcement is marred by the existence of procedural delays. This may be speeded up by having a special cell at the MLAT of the Ministry of Home Affairs and a uniform procedure regarding request. The country that is already under the Financial action Task force (FATF) review, Sri Lanka, must further develop international cooperation arrangements, sign more treaties, and speed up the implementation of anti-money laundering instructions. Specific weaknesses in the implementation of assets freezing and the international requests of evidence were pointed out by the Mutual Evaluation Report by FATF on Sri Lanka. The other important aspect of reform is civic engagement. India needs to promote the digital means of anti-corruption like corruption reporting mobile applications and legal support of whistle blowers and petitioners. Sri Lanka is allowed to form civil oversight committees to monitor the work of CIABOC like how it is done in the community policing practices. This would aid in checking agency responsibility of investigations that are partisan or of high visibility.

The Recovery and restitution systems of assets also need to be overhauled. India has been

successful in doing the same with the Fugitive Economic Offenders Act of 2018, which promotes asset seizure in selected cases even before conviction. Nonetheless, greater disclosure would be brought about by a national asset tracking registry and public reporting system. The law on asset forfeiture in Sri Lanka can be reformed in order to permit non-conviction-based seizures and this change will lead to better adherence to UNCAC standards of the STAR Initiative (Stolen Asset Recovery). Collectively, these reforms would do a lot to the enforcement architecture in the two countries. The government should consider a multi-stakeholder engagement with the legislators, the judiciary, the enforcement organs, the civil society and the international community in an effort to establish long term integrity in institutions.

Conclusion

Implementation of laws against white-collar crimes and financial scams in the India and Sri Lanka provides a set of various structural, institutional and legal issues. Despite having a common law tradition and experiencing similar socio-economic forces, the generic approaches of the given states to the enforcement activities have ultimate dissimilarities. India has built a relatively strong legislature and experienced some positive judicial intervention but still faces the long-standing legal cases, low prosecution rate and the probe agencies allegedly by the political interference. Sri Lanka, on the contrary, has provided the basic institution including Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and has hinted at international anti-corruption standards but its implementation suffers due to obsolete law, little institutional autonomy, and no legal protection to whistleblowers.

To the either of the countries, this relation has been worsened by the dynamic patterns of transnational financial crimes of cyber fraud and cross-border money laundering. Such crimes require a legal response that is coordinated and technologically advanced that in many cases, existing infrastructures are poorly placed to act on. Weak performance of institutions, the inappropriate utilization of new investigative technologies, their limited collaboration across borders, and lack of involvement of the population has reduced the efficiency of fight against corruption considerably.

In a bid to overcome these challenges, India and Sri Lanka need to put in action concrete and coordinated steps. First, the autonomy of institutions should be guaranteed by changing the hierarchies of the governance systems of enforcement agencies so that they

are insulated against political pressure. More credibility is possible through open and merit-based appointment processes, non-removable terms of leadership positions, and by independently constituted committees. Second, legal mechanisms have to be brought up to date. India needs to operationalize its current protection laws guarding the whistleblowers and Sri Lanka has to take on the comprehensive statutory system that protects the individuals who report corruption. Moreover, the asset forfeiture and anti-money laundering laws need to be amended, in line with the international best practices.

Courts reform is also important. It would also be advantageous to both countries to establish dedicated courts or judicial benches that deal with economic crimes where complex cases may be easily and better adjudicated within a shorter time frame. Training of judges and prosecutors should also be done regularly in topics like financial forensics and cybercrimes etc. There should be increased technological capability through investment in digital forensics, the blockchain tool, and inter-agency secure data-sharing platforms. There would be increased technological infrastructure to help conduct more accurate and speedier investigations.

The enhancement of international cooperation must also be given priority. The countries of India and Sri Lanka should use the Mutual Legal Assistance Treaties well as the extradition systems in order to track the fugitives and retrieve the stolen wealth. This would improve their cross-border capacity by being better in line with the financial action task force recommendations and more dynamic within the international legal networks. Moreover, civic involvement and accountability to the people is a key to a long term reform. The transparency laws which ensure universal access to information, media, and civil society monitoring of the executing body and citizens reporting corruption cases in an accessible secure digital site would boost concerns on the enforcing organs.

Capacity-building of the institutions by means of training programs and technical assistance on an ongoing basis is essential so as to train the investigators, auditors and prosecutors in dealing with sophisticated economic crimes. Lastly, there has to be implemented performance monitoring mechanisms. The anti-corruption agencies must be audited by other agencies, and information on results of investigation, conviction and rate of recovery of assets should be in the books. Finally, both India and Sri Lanka should not only regard reforms in their entirety, but also in an integrated way considering a balanced combination of legal innovation, technological development, institutional integrity, and

the influential participation of the people. It is only when they do this, that they will establish viable, transparent and strong systems to tackle the menace of financial fraud and white collar crimes that are on the rise.

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