

The Impact of Bribery Commission on the Reduction of Bribery and Corruption in Sri Lanka

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ABSTRACT

The impact of bribery and corruption in Sri Lanka has paved the way to establish a permanent Commission to Investigate Allegations of Bribery and Corruption with an objective to the institution of prosecutions for offences under the Bribery Act and the Declaration of Assets and Liabilities Law. The basic structure of the Bribery Commission is outlined in the Commission to Investigate Allegations of Bribery or Corruption Act(CIABOC) and consequently, the legal framework has been developed from time to time. The research problem of the present study focuses on how the CIABOC has been effective in performing its duties as envisaged by the State. Data collected through library research method and available written sources and the findings indicate that the cooperation received from the general public in running the CIABOC smoothly is insufficient due to various factors such as fears of reprisals from culprits, inadequate communication between complainants and the CIABOC, delays in making complaints, lack of staff and lack of remuneration for the officials and all this militate against the performance of the GIABOC. The study proposes the amendment of the Bribery and Corruption Act as a timely requirement and the provision of adequate financial facilities and new recruitments to the staff to speed up the progress of the Commission to investigate bribery and corruption in Sri Lanka.

Keywords: Bribery, Corruption, Performance, Complainants

INTRODUCTION AND BACKGROUND OF THE STUDY

This study examines the impact of the Bribery Commission in curbing bribery and corruption. The first piece of legislation in respect of Bribery and Corruption was seen in Sri Lanka with the provisions in the Penal Code¹. However, these provisions were found ‘unsatisfactory and insufficient’² to curb the Bribery and Corruption that existed at the time. The offences of Bribery and Corruption have a serious socio-economic impact on society thus threatening the Fundamental Rights guaranteed to the people of Sri Lanka, who are sovereign as per Article 3 of the Constitution of Sri Lanka. This was justified by the statement of Kofi Annan, the Secretary General of the UN ‘Corruption is an insidious plague that has a wide range of corrosive effects on societies’³. Therefore, quick measures were needed to bridge this lacuna, Accordingly, in 1954 The Bribery Act was introduced to minimize Bribery and Corruption, and thereafter, in 1994, an Independent Commission to Investigate Allegations of Bribery or Corruption (hereinafter referred to as CIABOC)⁴ was established

¹ Sections 158- 161 of Penal Code of Sri Lanka, No 2 of 1883

²Parliamentary Debates (Hansards) 3rd volume of the second session of the second Parliament of Ceylon; Bribery Bill, second reading 1646&See further R. K. W. Goonesekare, Chapter I of Report of the Bribery Commission 1948-49 mentioned in Bribery a study in Law making and of Criminal Process (Wesley Press 1976)

³ Kofi Annan, the Secretary General of UN ‘The Statement on the adoption by the General Assembly of UNCAC’³¹st October 2003<https://www.unodc.org/unodc/en/treaties/CAC/background/secretary-general_speech.html> accessed 23rd February 2020.

⁴Commission Act No. 19 of 1994

because of further strengthening the powers vested with the Bribery Department and also giving this investigation body independence.

Corruption is a kind of remuneration promised, taken, or gratification expected for a service i.e. rendered in the course of fulfillment of one's administrative or other lawful duties. It has spread all over the world. Bribery and Corruption in Sri Lanka date back to the king's era. People used to give 'santhosam', 'thutupanduru' or 'pakkudam' to show their generosity towards others which they did not count as Bribery or Corruption. Unfortunately, in today's context, people have got into a 'tragic situation where they feel that to persuade some person in authority to do his bare duty, to get bear justice, they must use influence only one hand or resort to some kind of bribery on the other'⁵

The Commission has the power to investigate and institute proceedings against the people who have committed offences under the Bribery Act and/or Asset and Liabilities Law⁶. Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 Of 1994 under section 28 has defined bribery as a "solicitation or acceptance of any gratification in contravention of any provision" and corruption is defined under Section 70 of the Bribery (Amendment) Act No.20 of 1994 as;

Any public servant who, with intent, enactment, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favor or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or the Government, or that any wrongful or unlawful benefit, favor or advantage will be conferred on any person-

- 1) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant;
- 2) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant;
- 3) uses any information coming to his knowledge by virtue of his office as a public servant;
- 4) participates in the making of any decision by virtue of his office as a public servant;
- 5) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act.

Shall be guilty of the offence of corruption and shall upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine."

Corruption is a key factor in poor economic performance and a major barrier to poverty alleviation and development⁷ and corruption impedes the development of a country. It has been Twenty-eight years since the establishment of an Independent Commission to Investigate Allegations of Bribery or Corruption in Sri Lanka, but there is a lacuna in the system that has enabled bribery and corruption offences to exist in today's society. Therefore, this research will critically analyze in comparison to the Annual Reports of the CIABOC the impact of CIABOC in the light of reducing bribery and corruption offences in Sri Lanka. The research will also examine the existing investigation procedure, litigation process, and prevention structure at CIABOC, the procedure followed by the Commission, and proceed to recommend reforms needed to minimize offences of Bribery and Corruption in Sri Lanka

Problem statement

In 1994, the Sri Lankan Parliament was of the view that it is not possible to eradicate bribery and corruption from our country and as a result of Bribery and Corruption, 'very large sums have been siphoned off and many foreign governments and international lending agencies have protested about the magnitude of bribery and corruption in our country. Further, the spirit of cynicism can be seen and if it is not addressed, there is a

⁵ Parliamentary Debates (Hansards) 3rd volume of the second session of the second Parliament of Ceylon; Bribery Bill, Second reading 1646

⁶ *ibid* section 03

⁷ *Supra* note 3

definite danger to the stability and tranquility of political and social institutions in our country'⁸ Acknowledging the gravity of bribery and corruption, an Independent Commission was established giving quasi-judicial powers.

It was emphasized in the parliamentary debate in 1994 that there is a need to look at the existing mechanism to identify the weaknesses of CIABOC and to see what steps are necessary to improve the mechanism that exists in society⁹. However, there is no such study conducted in Sri Lanka that critically evaluates the existing mechanisms of CIABOC and its impact in reducing bribery and corruption. Further, it is noted that the Bribery Act, Commission Act, and Asset and Liabilities Law focused on a punitive approach and not on preventive mechanisms. Nevertheless, at present, the Commission has enhanced its scope by establishing a prevention unit. This study is significant in light of the present economic dilemma of the country, where many organizations including international forums have highlighted the need and importance to reduce bribery & corruption. It is the prime responsibility of CIABOC to control and prevent bribery and corruption offences. Therefore, it is paramount to critically evaluate the impact of the existing mechanisms at CIABOC and its pros and cons to develop the scope of CIABOC.

Research questions

- 1) What is the existing legal framework and the structure of the Bribery Commission and its powers and functions?
- 2) What is the structure and authority of the investigation division to investigate bribery and corruption offences?
- 3) Do the function and the role of the legal division minimize bribery and corruption offences?
- 4) To what extent does the mechanism followed by CIABOC prevent bribery and corruption offences in Sri Lanka?

Objectives of the Research

- 1) To examine whether the present structure of the CIABOC is sufficient to reduce bribery and corruption offences in Sri Lanka.
- 2) To analyze whether the CIABOC Act provides the necessary mechanisms/tools required to investigate, litigate, and thereby prevent bribery and corruption.
- 3) To evaluate whether current preventive measures adopted by the CIABOC are sufficient in creating awareness and thus curb bribery and corruption.
- 4) To compare and contrast by the analysis of the data in the annual reports the issues about the existing system under the CIABOC Act in curbing bribery and corruption.
- 5) To recommend a mechanism that would address the issues about the existing system which would strengthen the investigations conducted by the CIABOC.
- 6) To submit a better preventive system that can be adopted by the CIABOC, which also can be easily understood by the legal community.

METHODOLOGY

This research is based on primary and secondary sources. This study is based on the construction of the Commission to Investigate Bribery and Corruption and a quantitative research method has been used to identify the impact of the Bribery Commission on the reduction of bribery and corruption offences in Sri Lanka. The quantitative research method in this study involved the examination of data published in the annual reports of the Commission to Investigate Allegations of Bribery and Corruption for the past twelve years. The data collection was conducted through library research and internet-based databases. Primary sources that were relevant to the research include the experience and the knowledge of the writer who is currently employed in the capacity of an Assistant Director Legal at CIABOC, Legislative enactments,

⁸Parliamentary Debates (Hansards), Volume 94 - No.7

⁹*ibid*

Hansards, resolutions, conventions, research articles Government orders, case law have been used in this study.

The Secondary data were collected from the data published in the annual reports of the Commission to Investigate Allegations of Bribery and Corruption past 12 years(2010 -2021). Books, websites, journals, and other resources were used to collect information and literature relevant to the title.

The findings of this research were based on a comparison of the literature review which revealed the existing system and the structure of the CIABOC and the official data was available that revealed the facts and figures of the investigations, offences for which action has been filed, etc.

The public outcry to reduce bribery and corruption paved the way to ‘establish a permanent commission to investigate allegations of Bribery and Corruption and to direct the institution of prosecutions for offences under the Bribery Act¹⁰ and the Declaration of Assets and Liabilities Law^{11,12}. The basic structure of the Bribery Commission is outlined in the Commission to Investigate Allegations of Bribery or Corruption Act and the legal framework has been developed from time to time. Thus, the writer expects to discuss bribery and corruption, the evolution of bribery and corruption law, the powers and functions of CIABOC, and the present structure established to reduce bribery and corruption.

The definition of Bribery and Corruption is different from country to country. Several definitions can be seen given in Dictionaries. When it comes to the Sri Lankan context, the Bribery Act defines the word bribery but there is no specific definition is given for corruption.

Britannica Encyclopedia defines Bribery as ‘the act of promising, giving, receiving, or agreeing to receive money or some other item of value with the corrupt aim of influencing a public official in the discharge of his official duties. When money has been offered or promised in exchange for a corrupt act, the official involved need not accomplish that act for the offense of bribery to be complete. The crime is typically punishable as a felony.’¹³

Bribery Act defines Bribery as ‘the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of this Act, or any other act in contravention of any such provision’¹⁴

Black’s Law Dictionary defines Corruption as ‘Illegality; a vicious and fraudulent intention to evade the prohibitions of the law; something against or forbidden by law; moral turpitude or exactly opposite of honesty involving intentional disregard of law from improper motives. State v. Barnett, 60 Okl. Cr. 355, 69 P.2d 77, 87. An act done with the intent to give some advantage inconsistent with official duty and the rights of others. Johnson v. U. S., C.C.A. Alaska, 260 F. 783, 786. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or another person, contrary to duty and the rights of others. U. S. v. Johnson, C.C.Ga., 26 F. 682; Worsham v. Murchison, 66 Ga. 719; U. S. v. Edwards, C.C. Ala., 43 F. 67.’¹⁵

The history of written bribery law in Sri Lanka begins in 1883 through the chapter IX of the Penal Code¹⁶ which denotes the offences by or relating to public officers. Hence Bribery under the Penal Code is not treated separately from other offences, investigations were carried out by the Department of Police and the prosecution was done by the Attorney General. The offences mentioned in the Penal Code had certain loopholes. As mentioned in De Zoyza v Subraweera¹⁷, Section 158 does not prohibit a public officer from taking a bribe as a motive or reward for doing an act that is not his official power to perform. ‘In Tennekoon v

¹⁰ Act No. 11 of 1954

¹¹ Act No. 01 of 1975

¹²Preamble of the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994

¹³<<https://www.britannica.com/topic/bribery>> accessed on 09/01/2021

¹⁴ Section 90 of the Bribery Act.

¹⁵*ibid*

¹⁶*ibid* (n 1)

¹⁷(1941) 42 NLR 357

Dissanayaka¹⁸, Gratton J. stated that the plain meaning of the language of an antiquated statute cannot be given an extended judicial interpretation to cope with modern methods of corruption. 'In both these cases the scope of the law was found to be circumscribed by the need to prove that the illegal gratification related to an official act of the public officer'¹⁹. Further, the word 'Gratification' did not have a wider meaning to include the mental or bodily desires gained by people such as sexual intercourse and the satisfactions which cannot be measured in money.

In bribery offences, the court has to consider 'whether the public servant took the gratification as a motive or reward for doing an official act. The burden is on the prosecution to prove not only taking of the gratification but also the motive and this aspect of the law has imposed too difficult a burden on the prosecution'²⁰. Further, the bribe giver, and Member of the Parliament were not included as offenders. Due to the aforementioned facts, there was a need to introduce a new law to Bribery and Corruption offences.

The ultimate conclusion of the Bribery Commissions which inquired about Bribery and Corruption offences in Sri Lanka is that 'bribery and corruption have become widespread and common in every walk of life'²¹ and 'vigorous actions should be taken to counter it'²². Understanding the need for a separate law to address all forms of bribery, Sir J. Kothalawala presented the Bribery Bill before the House of Representatives stating that 'this Bill is so far-reaching, so important that nobody likes to have it on Statute Book for all time'²³.

The Bribery Act No 11 of 1954 came into effect on the 1st of March 1954 and it did not repeal the sections of the Penal Code. However, the Bribery Act superseded the Penal Code provisions under 'generalia specialibus non derogant' principle, and the Act covered both the bribe giver and bribe taker, and the term 'gratification' was given a very wide definition.

Bribery Commissioner Department

The Bribery Commissioner Department was established by the Act No. 40 of 1958. Under the Act, a Bribery Commissioner was appointed and the powers vested with the Attorney General about the bribery offences were given to the Bribery Commissioner's department. A Bribery Tribunal was established to inquire about the all-bribery offences. The Bribery Tribunal was abolished by Act No. 2 of 1965 and the jurisdiction to hear bribery matters was given to the District Courts. Further, by Act No. 8 of 1973, a special District Court was established as the Bribery Court for litigation purposes.

According to Act No. 9 of 1980, the charges were framed in the Magistrates Court by the Bribery Commissioner and the indictments were filed by the Attorney General on the recommendations of the Bribery Commissioner. In 1979, a Gazette was published²⁴ and the Jurisdiction for the bribery offences was given to the Magistrate Courts and High Courts of Colombo. The government observed that 'there are certain deficiencies and limitations upon the present definition of bribery therefore a new offence of corruption was introduced in 1994'²⁵.

Commission to Investigate Allegations of Bribery or Corruption (CIABOC)

The Bribery Commissioner Department was under the Ministry of Justice and it became a bar to investigate allegations against bribery and corruption independently. Therefore, an independent Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established to investigate allegations against

¹⁸(1948) 50 NLR 403

¹⁹R. K. W. Goonesekere, Chapter I of Report of the Bribery Commission 1948-49 mentioned in Bribery a study in Law making and of Criminal Process (Wesley Press 1976)

²⁰*ibid*

²¹*ibid* (Report of the Colombo Municipal Council Para 06)

²² Report of the Bribery Commission (1948-49), para 182

²³Parliamentary Debates (Hansards) 3rd volume of the second session of the second Parliament of Ceylon; Bribery Bill, Second reading 1646

²⁴ Gazette No. 43/4 of 1979.

²⁵Section 7 of the Act No. 20 of 1994.

bribery and corruption by Act No. 19 of 1994. The purpose of bringing this Act was stipulated by Professor G. L. Peris in Parliament Debates²⁶. As per Professor G. L. Peris, the government can expect impartiality, autonomy, and continuity of its functions by establishing an independent commission.

After the establishment of CIABOC, the power vested with the Bribery Commissioner Department was shifted to the Commission to Investigate Allegations of Bribery or Corruption, and the procedural law was changed accordingly. The Commission to Investigate Allegations of Bribery or Corruption has expanded its powers and today it works as a quasi-judicial institution. The Commission to Investigate Allegations of Bribery or Corruption mainly has the power to investigate offences committed under the Bribery Act²⁷ and the Declaration of Assets and Liabilities Law²⁸. Further, the investigation powers²⁹ were expanded by the 19th Amendment to the Constitution. According to that Amendment, the Bribery Commission can begin an investigation by its motion rather than waiting for complaints. However, this power was repealed by the 20th Amendment to the Constitution, and by the 21st Amendment to the Constitution, the legislature re-established the powers given to the Commission to Investigate Allegations of Bribery or Corruption as the 19th Amendment. Therefore, at present CIABOC can institute investigations by its motion without awaiting a communication.³⁰

Further, the power to institute proceedings is vested with the Commission³¹. The power to sign indictments which was vested in the Attorney General was given to the Director General of the Commission to Investigate Allegations of Bribery or Corruption³² and made CIABOC an Independent Commission. From 1994 up to now, CIABOC has functioned as an Independent Commission and the vision of CIABOC is to make a society free of bribery and corruption.

Powers of the Commission to Investigate Allegations of Bribery or Corruption

Section 05 (1) of the Commission to Investigate Allegations of Bribery or Corruption Act (CIABOC Act) denotes that the Commission has the following powers.

- a) to procure and receive all such evidence, written or oral, and to examine all such persons as the Commission may think necessary or desirable to procure, receive, or examine;
- b) to require any person to attend before the Commission to be examined by the Commission and to answer, orally on oath or affirmation, any question put to him by the Commission relevant, in the opinion of the Commission, to the matters under investigation or require such person to state any facts relevant to the matters under investigation or require such person to state any facts relevant to the matters under investigation in the form of an affidavit;
- c) to summon any person to produce any document or other thing in his possession or control;
- d) to direct by notice in writing the manager of any bank to produce, within such time as may be specified in the notice, any book, document, or cheque of the bank containing entries relating to the account of any person in respect of whom a communication has been received under section 4 or of the spouse or a son or daughter of such person, or of a company of which such person is a director, or of a trust in which such person has a beneficial interest or of a firm of which such person is a partner, or to furnish as so specified, certified copies of such book, document, cheque or of any entry therein;
- e) to direct by notice in writing the Commissioner-General of Inland Revenue to furnish, as specified in the notice, all information available to such Commissioner-General relating to the affairs of any person in respect of whom a communication has been received under section 4 or of the spouse or a son or daughter of such person and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to such person, spouse, son or daughter which is in the possession or under the control of such Commissioner-General;

²⁶ Parliament Debate on 4th October 1994.

²⁷ Act No. 11 of 1954

²⁸ Act No. 01 of 1975

²⁹ Section 4 and 5 of the Act No. 19 of 1994

³⁰ Section 28 of the 21st Amendment to the Constitution.

³¹ Section 4 (2) (a) and 11 of the Act No. 19 of 1994

³² Section 12 read with section 16 of the Act No. 19 of 1994

- f) to direct by notice in writing the person in charge of any department, office or establishment of the Government or the Mayor, Chairman, Governor or Chief Executive, howsoever designated, of a local authority, Provincial Council, scheduled institution, or a company in which the Government owns more than fifty per centum of the shares, to produce or furnish, as specified in the notice, any book, register, record or document which is in his possession or under his control or certified copies thereof or of any entry therein ;
- g) to direct any person in respect of whom a communication has been received under section 4 to furnish a sworn statement in writing - (i) setting out all movable or immovable property owned or possessed at any time, or at such time as may be specified by the Commission, by such person and by the spouse, son or daughter of such person and specifying the date on which each of the properties so set out was acquired, whether by way of purchase, gift, bequest, inheritance or otherwise ; (ii) containing particulars of such other matters which in the opinion of the Commission are relevant to the investigation ;
- h) to direct any other person to furnish a sworn statement in writing - (i) setting out all movable or immovable property owned or possessed at any time or at such time as may be specified by the Commission, by such person where the Commission has reasonable grounds to believe that such information can assist an investigation conducted by the Commission; (ii) containing particulars of such other matters which in the opinion of the Commission are relevant to the investigation;
- i) to prohibit, by written order, any person in respect of whom a communication has been received under section 4, the spouse, a son or daughter of such person, or any other person holding any property in trust for such first-mentioned person, or a company of which he is a director or firm in which he is a partner from transferring the ownership of, or any interest in, any movable or immovable property specified in such order until such order is revoked by the Commission; and to cause a copy of such written order to be served on any such authority as the Commission may think fit, including in the case of immovable property, the Registrar of Lands, in the case of a motor vehicle, the Commissioner of Motor Traffic and in the case of shares, stocks of debentures of any company, the Registrar of Companies and the Secretary of such company;
- j) to require, by written order, any authority on whom a copy of a written order made under paragraph (i) has been served, to cause such copy to be registered or filed in any register or record maintained by such authority;
- k) to require by written order the Controller of Immigration and Emigration to impound the passport and other travel documents of any person in respect of whom a communication has been received under section 4, for such period not exceeding three months, as may be special in such written order; and
- l) to require by written order, any police officer as shall be specified in that order, whether by name or by office, to take all such steps as may be necessary to prevent the departure from Sri Lanka of any person in respect of whom a communication has been received under section 4 for such period not exceeding three months, as may be specified in such order.

It is further mentioned that these powers can be exercised by the Commission itself or by any person to whom the Commission issues any direction in the exercise of such power³³.

Apart from that by the 19th Amendment to the Constitution, the Commission was given the power to direct the holding of a preliminary inquiry or the making of an investigation into an allegation of bribery or corruption, whether of its motion or on a complaint made to it, and the power to institute prosecutions for offences under the law in force relating to bribery or corruption³⁴. Although, this power was repealed by the 20th Amendment to the Constitution³⁵ was reintroduced by the 21st Amendment to the Constitution³⁶.

³³ Section 5 (2) of the Act No. 19 of 1994

³⁴ Article 156A (1) (b) of the 19th Amendment to the Constitution of Sri Lanka

³⁵ Section 55 of the 20th Amendment to the Constitution of Sri Lanka <https://www.dgi.gov.lk/images/pdf/2020/PL_011963_-_Gazette_Supplement_E.pdf> accessed 23 November 2020

³⁶ Article 156A of the 21st Amendment to the constitution of Sri Lanka

Functions of the Commission to Investigate Allegations of Bribery or Corruption

As per section 4 of the Commission Act, a complaint or communication should be sent to the Commission to begin an investigation ‘Where any such investigation discloses the commission of any offence by any person under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, the Commission shall direct the institution of proceedings against such person for such offence in the appropriate court’³⁷. If the Commission decides that the communication received should be dealt with by any other authority, the Commission can forward such communication to the relevant authority before conducting an investigation or after conducting an investigation³⁸.

The structure of the Bribery Commission

The Commission to Investigate Allegations of Bribery or Corruption mainly consists of the Commission comprising three Commissioners and the Director General as the administrative body of the Commission. Investigation Divisions and the Legal Division play the main roles in investigation and litigation whereas the Information Technology branch, Production Branch, and the court branch act as the subordinate branches of Investigation Divisions and the Legal Division. Further, the Secretary Division, Finance Division, Internal Audit Division, Planning Division, and Administrative Division provide their fullest support to maintain CIABOC.

DIVISIONS OF THE COMMISSION AND ITS FUNCTIONS

The Commission

His Excellency the President of the Democratic Socialist Republic of Sri Lanka appoints the members of the Commission for a term of five years as per Section 2(b) of the Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994 and on the recommendation of the Constitutional Council of 1978. The Commission comprises three members two of whom are required to be retired judges of the Supreme Court or the Court of Appeal and the third member is required to be a person with wide experience relating to the investigation of crime and law enforcement. One of the members of the Commission, either the retired judge of the Supreme Court or the retired judge of the Court of Appeal is appointed as the Chairman of the Commission by the President.

The success of the Bribery Commission depends on the number of complaints received by the Commission. This denotes that the people have faith in the Commission and that the Commission will play a major role in the reduction of bribery and corruption in society. Further, the number of investigations completed per year denotes the competency of CIABOC. Therefore, the writer has gathered the following data which denotes the number of received complaints and investigations for the past twelve years to come to a conclusion on the competency of CIABOC in the reduction of bribery and corruption offences in Sri Lanka.

3.5.1 Table

	2010	2011	2012	2013	2014	2015*	2016	2017	2018	2019	2020	2021
Total No of Complaints received	1636	2537	3163	3124	2345	3913	3450	2768	3465	3305	2764	2335
No of Investigations	190	1217	1383	951	893	2692	2172	1652	2157	2095	2017	966
No of investigations brought forward (including P/I) from previous years	3332	4442	5773	7017	8344	9752	10634	3199	**	**	**	**
Total Complaints to be desposed for the year (Total No of Complaints received+No of investigations brought forward)	4968	6979	8936	10141	10689	13665	14084	5967	**	**	**	**
Closed files	526	1206	1919	1797	937	3021	604	732	1019	946	595	1295

³⁷ Section 3 of the Act No. 19 of 1994

³⁸ Section 4 (2) of the Act No. 19 of 1994

Source: Annual Reports of CIABOC from 2010 - 2021

According to the aforementioned data, it is noted that the number of complaints has increased gradually. Even though the concluded number of investigations are also increased that increase is not sufficient enough to finish the total number of received complaints for the year. As a result of that every year some files remain unattended and progressively it has increased the backlog of files. 2015* Annual report has mentioned that a significant backlog of cases remains open from the year 2000. In 2016, there were a total number of 10,634 files brought forward from previous years. However, the annual reports prepared after 2017, do not indicate the number of files brought forward from previous years. (*the table and graphs on pages 24 and 25 in the Annual Report of 2015, indicate the increase, an overview of the past complaints and investigation)

It is further noted that the 2017 Annual Report has not provided any explanation on how the backlog of 14084 files has been reduced to 5967 files. Further, the thorough study of the annual reports denotes that there is no specific approved structure in preparing the annual report and data have been entered in a confusing manner which will overlap the previous data. CIABOC does not have a separate staff who has data analytical knowledge to collect data and prepare statistical reports. Therefore, the reports prepared by CIABOC for the past twelve years lack statistical quality.

Identified Problems

Sometimes CIABOC receives communications that denote the said act happened many years ago. When an investigation begins for such complaints, the investigators have to face numerous problems due to loss or tempering of evidence which put the prosecution in a difficult position to prove the allegation. Therefore, the writer is of the view that delayed complaints are a major problem in obtaining proper action against bribery or corruption. Since the CIABOC has improved its communication methods as stated in paragraph 3.3, it is observed that there is a reduction in receiving delayed complainants. Nevertheless, the writer is of the view that people should be educated to lodge complaints without delay.

It has now become a trend that people complain to CIABOC at the moment they have to get rid of the situation. But later they changed their mind and did not support providing evidence in court as witnesses. For example, when a person complains to the CIABOC that a principal of a school solicits money to admit a student to grade one, the situation CIABOC can organize a raid. If the raid is successful, the principal is taken into custody and CIABOC begins the litigation against the principal. At the time the evidence is led in court, the complainant is reluctant to give evidence due to various reasons such as they may have empathized towards the accused or fearing that their child will be treated differently at school or some other reason. The outcome of this situation is the acquittal of the accused without being punished for the offence he or she did.

The Bribery Act has not provided any legal obligation on complainants to be with the case until it is over. Therefore, the Commission cannot take any action against the complainants who do not support the Commission to conduct further investigation and litigation after making complaints to CIABOC. Thus, the writer is of the view that a legal provision should be introduced compelling the complainant to provide his/her fullest cooperation to the Commission.

Apart from that, the complainants send their complaints to CIABOC but do not cooperate to provide detailed statements and send an affidavit saying that they do not wish to proceed further with the complaints. There are various reasons such as the influence of the offender, poverty to bear the travel expenses to cooperate for the litigation process to come before courts in Colombo or the complainant is no more interested in his or her complaint to withdraw the complaint. Yet, they make huge losses to the government by wasting the time and money of the Commission. Thus, the writer is of the view that the CIABOC does not have enough powers and no strong laws to avoid such kind of situations.

It is observed that the salaries paid to and the facilities provided to investigation officers are not satisfactory. Because of that, CIABOC cannot hire skilled investigation officers who are specialized in various streams like Chartered Accountants, and Forensic auditors. Moreover, with the improvement of lodging complainants to

CIABOC the investigation officers are burdened with so many investigation files and sometimes they are in difficulty in meeting deadlines as well.

It is noted that the investigation structure has been expanded by introducing a forensic unit and an intelligence unit in CIABOC. However, these units should be developed by providing high-tech equipment and skilled investigation officers who have special knowledge of technology. The writer expects to address these identified problems and provide the most appropriate suggestions to improve the present investigation mechanism in his last chapter

The Director General appointed under Section 16 of the Commission to Investigate Allegations of Bribery or Corruption Act performs as the Head of the Legal Division. The staff consists of 05 Deputy Director Generals, 07 Assistant Director Generals, 12 Assistant Directors (Legal) and 16 Legal Assistants. In addition to that the Commission obtains assistance from the officers of the Attorney General's Department. Furthermore, the Commission can hire attorneys at Laws from the private bar if necessary³⁹. The Commission has an independent Legal Division which is responsible for evaluating evidence and prosecuting in courts, if necessary.

Upon receiving a file from the legal division, the allocated legal officer is responsible for that file until a legal report is prepared. The scope of a legal officer is not confined only to preparing a legal report. He or She should attend to advise files and provide instructions to investigation officers, if necessary, prepare plans and indictments and prosecute in courts on behalf of the Commission. Apart from that these legal officers are given multiple tasks by the Commission such as organizing training programs for both legal and investigation divisions, organizing and conducting awareness programs with prevention officers, working as RTI officers, supervising investigation branches, and contributing to Act amendments.

Moreover, the legal division assists the Commission in perusing the complaints and filtering the complaints at the initial stage to avoid unnecessary complaints being investigated. Apart from that, legal officers become members of tender boards and management committees. Furthermore, the legal division prepares reports for GSP+, IMF, and other international organizations upon their request.

Criminal liability is imposed for the Bribery and Corruption offences. By imposing criminal liability, it is expected to deter people from committing such offences. Therefore, the number of convictions is a very important factor in minimizing bribery

and corruption. The jurisdiction to hear and determine bribery cases is vested in Colombo⁴⁰. The Bribery Commission originally institutes proceedings in Magistrate Courts and High Courts based on the monetary value of the case according to the Bribery Act and the Declaration of Assets and Liabilities Law⁴¹. As per the amendment to the Bribery Act in 2018, corruption cases can be filed directly in High Courts⁴². Further, the amendment made to the Judicature Act has allowed having a Trial at Bar in respect of financial and economic offences specified in the Sixth Schedule to the Act⁴³. The following tables indicate the number of convictions, acquittals, or discharges in different courts.

Table 1: Magistrate Courts

As per section 11 of the Commission Act, the jurisdiction to file a case for gratification that does not exceed the value of Rs. 2000/- is given to the Magistrate Court. In addition to that jurisdiction for corruption matters is given to the Magistrate Court until it is amended by the Act No 22 of 2018. After the amendment, corruption cases can be filed in High Court as well. Further jurisdiction to file non-declaration of asset matters is vested with the magistrate court.

³⁹Section 13 of the Act No. 19 of 1994

⁴⁰Gazette Extraordinary No 43/4 of July 2, 1979

⁴¹ Section 11 of the Act No. 19 of 1994

⁴² Section 02 of the Act No. 22 of 2018

⁴³ Section 02 of the Judicature (Amendment) Act, No. 9 of 2018

Magistrate Courts details;

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
No of cases filled	23	8	22	13	12	32	44	32	16	9	8	5
No of Convitions	5	11	6	4	3	**	2	18	19	6	4	2
No of Acquittals	1	10	8	3	6		5	2	7	13	5	2
No of Discharge		1	2		1							
Accused Demise												
No of Withdraw	1			5								22
Others									1	1		
Ongoing cases	**	53	41	45	46	**		101			81	60

Source: Annual Reports of CIABOC from 2010 – 2021

This Table denotes that, the highest number of cases filed in Magistrates Courts in the year 2016. The highest number of convictions has been obtained in 2017 and 2018. Due to the Covid 19 pandemic prevailing in the country, the number of cases filed in court has been drastically reduced from 2019-2021. Further, as an effect of Anoma Polwatte v Jayawickrama Director General, Bribery Commission, and others ⁴⁴, cases have to be withdrawn from the magistrate court reserving rights to refile the cases after correcting the technical error.

Table 4.2.2: High Courts

The jurisdiction to file a case for gratification that does exceed the value of Rs. 2000/- is given to the High Court by section 11 of the Commission Act. Apart from that, the jurisdiction to hear asset matters is vested with the High Court.

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
No of cases filled	44	26	55	45	52	76	43	41	36	34	42	57
No of Convitions	13	10	27	15	21		14	39	45	40	21	9
No of Acquittals	15	9	16	25	30		11	29	34	32	22	16
No of Discharge		8	8				1					
Accused Demise			1	2	1			1				
No of Withdraw				6	5							18
Others									4	3	3	
Ongoing cases	**	252	261	258	252	**		277			185	201

Source: Annual Reports of CIABOC from 2010 – 2022

As per the above table, the highest number of cases were filed in 2015 whereas the highest number of convictions were obtained in 2017. It is noted that the number of convictions is higher than the number of acquittals from 2016 to 2019. Further, the number of filed cases in 2021 has increased irrespective of the pandemic situation but the number of convictions is reduced considerably.

Table 4.2.3 – Permanent Trial at Bar (PTB)

⁴⁴SC (writ) 01/2011, SC Minute dated 26.07.2018

The amendment to the Judicature Act⁴⁵ in 2018 has paved the way to establish PTBs on the gravity and necessity of bribery or corruption offenses. By establishing PTBs, the legislature expected to expedite the hearing of cases within a short period. So far, CIABOC has filed three cases in PTBs and has obtained a conviction for The Director General vs. Mahanama and Dissanayake case⁴⁶.

Permanent Trial at Bar (PTB)

Year	2019	2020	2021	2022
No cases filled	3			
No of Convictions		1		
No of Acquittals				
No of Discharge				
Accused Demise				
No of Withdraw				
Others				
Ongoing cases		2	2	2

Source: Annual reports of the CIABOC from 2019 -2021

Identified problems concerning the Legal Division

Raising preliminary objections on the sanction of the Commission Presently the legal division of the Commission to Investigate Allegations of Bribery or Corruption is facing a major legal issue in courts. It is regarding an objection raised by the defense on the sanctions of the Commission on the institute of proceedings.

In the case of Anoma Polwatte v Jayawickrama Director General, Bribery Commission, and Others⁴⁷ the ratio is that all three Commissioners should provide their consent to institute proceedings. After the Supreme Court decision in the Anoma Polwatte case in 2018, the most of defense Attorneys-at-Law took up the preliminary objection about the sanction of the Commission on the institute of proceedings and if all three Commissioners were not signed, they were in a position to raise the Preliminary objection.

Thus, it is clear that the members of the Commission can exercise ancillary powers on their own though the full complement of the Commission is not available at one given time. But as for the exercise of functions such as the direction to be given to the Director General, it is crystal clear that the Act has not provided for one member alone to give such direction

On perusal of the above-said judgment, it is evident that the Court in the first instance has drawn a distinction between ‘Functions’ and ‘Powers’ and then decided that issuing a directive under section 11 is a ‘function’ and not a ‘Power’.

The Court has further stated that, as section 2(8) empowers one or more of the commissioners to exercise only powers separately but not functions. Accordingly, the Court has held that a directive given under section 11 should be made by all three Commissioners.

⁴⁵ *ibid* (n 55)

⁴⁶ HC/PTB/01/04/2019 decided on 19.12.2019

⁴⁷ *ibid* (n57)

Jurisdiction

CIABOC is the only institution established to investigate and institute action (litigate) on Bribery and Corruption offences in Sri Lanka. This institution has not been decentralized and is located in Colombo. Therefore, as per the gazette notification in 1979, the jurisdiction is vested in Colombo, and thereby all the litigations are held in Colombo. As a result of that, when litigation starts the lay witnesses have to come from faraway places and they do not receive any allowance for travel expenses. Sometimes lay witnesses do not come to court because they cannot bear the travelling expenses and accommodation costs in Colombo.

Lack of Legal staff and supportive staff

The approved carder for the legal division consists of 1 Additional Director General, 5 Deputy Director Generals (DDG), 10 Assistant Director Generals (ADG), 30 Assistant Director Legal (ADL), and 17 Legal Assistants (LA) which in total 63 officers⁴⁸. However, CIABOC has 5 Deputy Director Generals, 6 Assistant Director Generals, 12 Assistant Director Legal, and 14 Legal Assistants in a total of 37 officers at present⁴⁹. This denotes that the legal division does not have half of its staff and because of that the legal officers are overburdened with advice files and court cases. This situation has been worsened by the present government policy of allowing public servants to go abroad without a salary. Due to the present economic crisis, today some of the experienced legal staff have left the country or have gone to other jobs which offer more salaries to them. It is observed further that CIABOC does not have adequate space and infrastructure to enhance its staff.

Delay in the recruitment process

CIABOC is a special institution where the investigation and prosecution are under one roof. Therefore, any legal officer who comes to CIABOC should have to learn the interior process. Further, the legal officers should be trained well to appear in courts since the President's Counsels appear for the defense in bribery and corruption cases. Since the new officers take some time to get proper training and do their work.

It is observed that there are delays in recruitment procedures and as a result of that vacancies are not filled immediately. As per the Annual report in 2018 steps had been taken to recruit 200 Forensic Investigators, 50 Prevention officers, and 17 legal Assistants, and yet, 200 Forensic Investigators have not been recruited. Therefore the writer is of the view that delay in the recruitment process also has a severe impact on reducing bribery or corruption.

	Approved Cadre	Existing Cadre	Vacancies
Senior	70	36	34
Tertiary	232	35	197
Secondary	442	297	145
Primary	140	90	50

Source: Annual report of the CIABOC in 2021

Lack of training

As mentioned in paragraph 4.3.4 recruits and the existing staff should have proper training on drafting of charges, report writing, and handling cases in courts. Further, the legal officers should know the law to handle

⁴⁸2018 Annual Report of CIABOC, 60

⁴⁹Communication had with the Director Administration of CIABOC

different situations in different cases in the courthouse. Therefore, the lack of training on legal knowledge of the staff of CIABOC plays a vital role in the reduction of bribery and corruption in Sri Lanka.

Lack of proper salary

Compared to private bars, the legal officers who work as prosecutors get a low salary whereas in private bars, the earnings are very high. Therefore, the recruitment of legal officers to CIABOC and the retaining of the recruited officers in the post of legal officers had been a struggle for reason past years.

Unfortunately, less than 40 officers are actively contributing to work in the Commission to Investigate Allegations of Bribery or Corruption for prevention purposes in our country, which has a population of about 22 million in an area of 65610sqkm. It should be about 550,000 people aware by one official considering the total population.

The total amount allocated to the commission from the state budget is less than 0.004%. Out of that full amount, the amount spent on anti-corruption works is comparatively very low. The Commission is carrying out prevention tasks with minimal resources and exceeding its scope of duties under extreme hardship. Most of the awareness and prevention programs are done by government officials and the student community. Their priority is given to developing resilience to reduce corruption.

Effective anti-corruption awareness among the general public is very costly. But it poses practical problems for the Commission, which is working at maximum capacity with minimal resources. Furthermore, despite the lack of awareness among the public about the cumulative criminal offenses of Acts No. 19 of 1994, No. 01 of 1975, and No. 11 of 1954 through anti-corruption programs, due to the public's belief that the Commission can deal with corruption and online offenses, every complaint is forwarded to the Commission.

Establishment of the Prevention Unit

The long title of the Bribery Act denotes that; it provides for the prevention and punishment of bribery and makes consequential provisions relating to the operations of other written laws. However, there is no specific provision allocated for the prevention. However, CIABOC has conducted a considerable amount of awareness programs and legal officers worked as the lecturers of those programs. However, as aforesaid CIABOC received official approval under NAP to conduct prevention programs and on 17/08/2018, a new Prevention Unit was established for easy working this was categorized into three segments as follows;

- Education sector
- Public sector
- General Public

These three sectors were headed by three senior officers in the Legal Branch until 2021 and now it is under the Secretary of the Commission to Investigate Allegations of Bribery or Corruption. The function of this prevention unit is to 'conduct prevention programs and raise awareness among people'⁵⁰.

After the establishment of the new prevention unit, 18 prevention officers were recruited to the Commission to Investigate Allegations of Bribery or Corruption on 01st March 2021. However, as of today, 15 prevention officers remain in the prevention unit.

As per the statistics in 2019, CIABOC has conducted 115 prevention programs which have increased awareness among the citizens and have made a significant contribution to the increase in the number of complaints compared to the year 2018. It was very unfortunate due to the Covid pandemic situation and the fuel crisis that occurred in Sri Lanka, CIABOC cannot conduct prevention programs as expected in 2020 and somehow managed to conduct 27 prevention programs in 2020 and 78 in the year 2021.

⁵⁰ 2018, Annual report of CIABOC, 09

Table 1. Number of Prevention programs conducted by CIABOC since 2018

	2018	2019	2020	2021
Education	15	30	5	20
Public Sector	25	75	20	35
Private Sector	5	10	2	3
Total	45	115	27	78

Source: Annual report of CIABOC from 2018 - 2021

Identified problems with the Prevention Division

The notion of 'Prevention' in the fight against corruption is a new concept for Sri Lanka. This is a matter that has managed to get a special attraction in other countries in the world. Prevention aims to reduce or eliminate opportunities for contamination. There are many problems faced by the Commission for preventive work at present. The lack of trained staff is one problem. As a result of the NAP and the establishment of the new prevention unit, the prevention programs were gradually increased. According to the statistics although 2021 was under the global pandemic of Covid 19 the prevention unit was able to conduct 75 awareness programs. Although the approved cadre for prevention officers was 50 only 18 prevention officers were recruited on 01.03.2021. At present only 15 officers are available for the entire country to conduct awareness programs other than the legal officers in CIABOC attached to the legal Division.

It is observed that the lack of salary or perks and no proper scheme of promotions is a disadvantage that CIABOC faces in recruiting Prevention officers. Further, it is observed that the procedural barriers and lack of cooperation with the various institutions are the challenges faced by the prevention unit.

CONCLUSIONS

In Sri Lanka, the existing legal regime that establishes the framework for Bribery and corruption to curb bribery and corruption has yielded poor results, consequently leading to inefficiencies and ineffective measures to prevent corruption. Though the number of received complaints of bribery and corruption has increased the number of cases investigated has declined resulting increased backlog of files. Many problems are contributing to the inefficiency of the CIABOC and among them, are a lack of support given by the general public delaying complaints insufficient training and staff members, and unsatisfactory payments and facilities for investigation officers are prominent. The findings of the study suggest that an amendment of the Bribery Act is needed to cover newly emerged crimes such as embezzlement of property, illicit enrichment, and money laundering.

RECOMMENDATIONS

Protect complainants and witnesses

'When dealing with bribery and corruption, legislation alone will not stop the evil. This Bill in the statute book will be of no value if there is no corporation from every citizen of this country'⁵¹ As the legislature mentioned, a citizen of Sri Lanka should play a key role in the eradication of bribery and corruption. Therefore, first of all, citizens must come forward and lodge complaints.

Using different modes of communication

The CIABOC has enhanced the mode of communication via post to online methods. By this, even a person in

⁵¹ *ibid* (n2) 1641 and 1621

a foreign country can complain to Sri Lanka without delay and physically come to the CIABOC. However, the writer working at CIABOC observes that there is a delay in receiving the communications into relevant divisions due to various reasons such as delay in recording the communications, and delay in attending to emails received by CIABOC.

To reduce unnecessary delay, the Commission has delegated some powers to senior legal officers to attend to these communications. Since the legal officers daily attend court, it is hard for them to attend communications daily. Therefore, the writer is of the view that a separate person should be appointed to attend to the communications and send them to the relevant divisions.

Avoid false complaints

All the complaints received by CIABOC should be investigated to find whether the complaints are genuine complaints or not. Sometimes, CIABOC finds out that the complaint is not true and the complainant purposely has sent incorrect information to pressure some innocent person. Therefore, the researcher is of the view that a legal provision should be introduced giving powers to CIABOC to institute legal proceedings against the people who sent false complaints.

Not using High-tech Equipment in investigations

The researcher is of the view that investigation officers should be trained to use high-tech equipment and CIABOC should introduce a mechanism to preserve the chain of custody fulfilling the procedure introduced in the Evidence Special Provisions Act. Then this high-tech equipment will be an added advantage for the case to prove the facts in court without leading so many witnesses and in the absence of the decoy.

Non-corporation of complainant and witnesses

Bribery and corruption cannot be reduced from society by only lodging complainants to CIABOC. The complainant should be with the CIABOC until the end of a court hearing to provide a proper punishment to the offender. But it is sad to see that the complainants do not cooperate with CIABOC after sending complaints. Sometimes the complainants send affidavits stating that they do not need further action to be taken against the offender. If the Commission entertains such kind of affidavits, CIABOC cannot reduce bribery and corruption in Sri Lanka. But on the other hand, CIABOC needs a complainant to provide evidence in court and if the complainant declares that he or she does not have any willingness to give evidence in court, it is futile to file a case in court since the offender is getting an acquittal. Therefore, the writer is of the view that a law should be introduced to incorporate responsibility unto the complainant to be with CIABOC until the end of the case.

Staff and Salary

As stated in previous chapters, the total number of investigation officers is 200 and the approved number of investigation officers is 274. This denotes that CIABOC lacks 74 investigation officers and as a result of that, the number of files to be handled by one person has been increased. Further, due to a lack of staff to prevent a backlog of files, investigation officers were given deadlines so that, it is hard to expect quality work since the investigation is a time-consuming process. Therefore, the writer is of the view that staff should be increased. In addition to that, the writer is in a few that not recruiting experts in the investigation also affects the impact on CIABOC, whereas this directly affects the reduction of Bribery and corruption in Sri Lanka.

Judicial acknowledgment of the gravity of bribery and corruption offences

From time to time there were discussions to have separate courts for bribery and corruption. However, it is not practically implemented and up-to-date bribery and corruption cases are heard with other criminal offences such as murder and rape cases. The criminal judges in Sri Lanka are much more familiar with murder and rape cases rather than bribery matters. The judiciary did not have a proper understanding of the specific nature of

bribery offences such as Accumulation of Assets and Corruption matters are mostly relied on documents⁵² and bribery offences based on the strict liability concept. Further, the complainants of the bribery cases are laymen such as farmers, cleaners, and laborers who do not have proper education and who directly go to Grama Niladhari, Divisional Secretariats, and Land registries to get their work done. Thus, it is unfair to expect a hundred percent accuracy from the judges when eliciting evidence from them. They may have forgotten some facts and the sequence of events that happened at the particular date in question. Further, they use colloquial words rather than the technical words that are written in the statements when giving evidence. Apart from that, innocent lay witnesses can be easily influenced by the bribe taker giving money or using political power hence he has much power over the laymen. Therefore, the judge has to consider these facts while hearing a bribery case.

Hence the jurisdiction is limited to Colombo, a complainant from Jaffna has to come to Colombo to give evidence. There is no facility provided by the government for the accommodation of long-distance travel complainants other than bata/traveling allowance which is a small amount of money not enough to have even a meal in Colombo. Bearing such difficulties, a complainant gives evidence at a court house and sometimes it is difficult to gather corroborative evidence as well. In *Sunil v Attorney-General*,⁵³ the case cleared the misconception stating that there is a 'misgiving among trial Judges in bribery court that the testimony of a witness in bribery prosecution is required to be corroborated before it could be acted upon; such a proposition is a manifest error of law'⁵⁴. Therefore, with the evolution of the case laws, the present judiciary has a better understanding of the nature of bribery cases and their impact on society and it has led to achieving the highest number of convictions for the previous two years. However, after the judgment of *Anoma Polwatte v Jayawickrama Director General, Bribery Commission, and Others*, the number of convictions was reduced.

Use of modern technology for investigation and prosecution

The role of the prosecutor is to create a picture of the questioned case in the mind of the judicial officer. For that, the prosecution used human and documentary evidence but the judiciary could not observe the accused's behavior at the time he or she was soliciting and/or accepting bribes or at the recovery of money. With the introduction of the Evidence (Special Provisions) Act⁵⁵ and the Electronic Transaction Act, digital evidence was accepted at trials. Therefore, to prove the solicitation of bribes telephone details were adopted for the past 15 years. In addition to that Audio recordings, Audiovisual recordings, and CCTV footage are now being used appropriately to prove the prosecution's case. The CIABOC has used CCTV and Audio recordings for the Commission to Investigate Allegations of Bribery or Corruption v. Mahanama and other cases which were given a conviction by the Trial at Bar.

Though human evidence can be varied due to the fading away of memory with time⁵⁶ audio-visual recordings remain intact for a considerable time. Therefore, the prosecution can obtain the advantage of the unchanged nature of modern technology where the human evidence does not create a strong case for the prosecution. By using new technology, the burden of the prosecutor in creating a picture in the mind of the judge has become a little bit easier and the ultimate result is the increase of the number of convictions. Therefore, the writer is of the view that proper training should be given to the prosecutors on high-tech equipment and a guideline should be introduced to maintain the chain of custody in order to obtain aforesaid benefits.

Should take steps to implement the National Action Plan

After launching NAP in 2019 as a five-year plan, Sri Lanka could not achieve the relevant targets mentioned in the NAP mainly due to the COVID-19 pandemic. In addition to that, there is no supervisory board appointed in the NAP to direct government institutions to meet the targets proposed in the NAP. Since the

⁵² In SC appeal 103/2012 decided on 14.12.2018, it was admitted that unlike in any other trial before a trial court, an Indictment forwarded under section 23(A) (3) of the Bribery Act depend largely on documentary evidence

⁵³ (1999) 3 Sri LR 192

⁵⁴ *ibid*

⁵⁵ No 14 of 1995

⁵⁶ *Bharwada Bhoginbhai Hirjibhai v State of Gujarat* decided on 24 May, 1983 and *Pargan Singh vs State of Punjab & Anr* on 5 September, 2014

NAP was brought by CIABOC as compliance with UNCAC, the writer is of the view that the responsibility to implement NAP is also vested with the CIABOC. If the CIABOC can implement NAP in its full capacity, the writer is of the view that the CIABOC can achieve prevention objectives.

Procedural berries should be removed.

It is observed that in some instances, CIABOC has to obtain approvals from the government ministries and institutions to organize prevention programs hence the CIABOC does not have direct power to conduct prevention powers. This has caused delays in organizing prevention programs. To avoid this kind of delay Education sector has already signed an MOU with the Ministry of Education. Likewise, the writer is of the view that CIABOC should work with other ministries and should take steps to issue a circular directing other institutions to provide their support to conduct awareness programs.

Travelling facility should be given

As discussed in previous chapters the travelling factor affects the preventing unit as well. Therefore, the writer is of the view that the prevention officers also should provide traveling facilities, and thereby the officers of CIABOC can attend the awareness programs without any difficulty. Thus, the writer observes that not having a common fund at CIABOC to bear such kind of expenses is a major problem when conducting awareness programs.

Bribery Act should be amended

The researcher is of the view that the Bribery Act also should be amended and that will also make some impact on the Bribery Commission on the reduction of Bribery and Corruption in Sri Lanka.

Here are a few suggestions /proposals on the amendments to the Bribery Act⁵⁷ as below mentioned paragraph;

Private sector bribery and corruption, bribery of foreign public officials, extra-territorial jurisdiction for all offences including corruption offence, Confiscation of property at the time of arrest, and monitoring method of confiscated property should be introduced. Moreover, it is better to provide a room to hire experts, if necessary. The powers and functions of the Commission⁵⁸ should be enhanced similarly to the Anti-Corruption Act(ACA) of Bhutan by giving powers to supervise and advise other institutions, higher officials...etc. Moreover, examining procedures of government and private institutions and providing appropriate advice and guidance to minimize corrupt activities thereto should be given to the Commission by amending the Commission Act. Hence Sri Lanka has not enacted an Act to implement UNCAC at the domestic level, it is better to give the power to the Commission to take appropriate actions to implement UNCAC and any other international anti-corruption law in Sri Lanka. Further, the Commission should be empowered to work collaboratively with other government institutions to prepare guidelines, policies ..etc. Apart from that, the Commission should have the power to share information with other institutions.

Declaration of Assets and Liabilities Law should be amended It is noted that the present Declaration of Assets and Liabilities Law in Sri Lanka is very outdated and declaration forms do not contain assets situated in foreign countries and do not have any verification method. Although the law denotes that, certain categories of people should annually handover Assets Declarations to their heads of the institution, there is no proper recording method carried out by Heads of Institutions. Therefore, most non-declaration of asset cases have failed in courts⁵⁹. Hence, the researcher is of the view that CIABOC should introduce a Standard Operative Procedure for institutions to avoid aforesaid mishaps.

It is hard to start litigation on complaints received from CIABOC on bribery and corruption offences due to a lack of evidence since it is very difficult to prove the case beyond a reasonable doubt. In such instances, administrative action can be taken. Since CIABOC cannot initiate administrative actions, the practice up to

⁵⁷ CIABOC, *Policy Suggestions for Proposed Legislative Amendments; handbook 04*(1st edn, CIABOC 2019) 38,39

⁵⁸ *ibid* 40

⁵⁹ Judgments bearing Nos. MC 60487/01/16, 60488/01/16, 60489/01/16 and 60490/01/16 delivered on 30/11/2018

date is sending that complaint to the relevant authority asking to take administrative actions. However, CIABOC does not supervise or monitor whether that institution took administrative action as stated. To avoid this type of incident, the writer is of the view that it is pertinent to have certain administrative powers to the Commission.

Further, the prevention powers should be given to the Commission without limiting it to the long title to educate the public and encourage them to stand against corruption. Further, section 17 of the Commission Act (secrecy clause) acts as a statutory barrier to sharing information with other institutions. Although the secrecy clause has been used to protect the information received by CIABOC and arrange Raids or take appropriate actions to catch the wrongdoer red-handed CIABOC needs to introduce certain exceptions to share the progress of investigations with institutions like FCID, and FIU which conducts various forms of corruption investigations such as money laundering. On the other hand, any institution that has secrecy clauses should introduce specific exceptions to build a reciprocal obligation to share information among institutions if necessary.

Converting into E-Systems

‘The more the government enters into commercial undertakings; the more the politicians and members of the public service come into contact with the public the greater the opportunities for corrupt practices’ Therefore it would be possible that the number of corruption offences occur in society has increased due to open economy and the desire of the people to spend luxurious lifestyles. However, the CIABOC does not have a proper mechanism to collect demographical data on the effects of Bribery and Corruption. In addition to that, the motivation factors for the increase of bribery and corruption may include poverty, lack of salaries of the government officers, lack of integrity of people, and not using the technology in government institutions to do work. For example, it is high time to obtain the advantages of the developed technology such as online payment methods, and e-format documents rather than meeting people face to face which will reduce the opportunity for offering soliciting, or accepting bribes but the practical implementation of these methods is very few. However, presently, people have to maintain social distance with the rapid spread of COVID-19 and as a result of that most of the government institutions are now diverting their services into online systems.

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