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# **State Capture and the Anti Corruption Law: A Comparative Study of Sri Lanka and Singapore**



## ACKNOWLEDGEMENT

This research publication was written by Sakya Attygalla, a Political Analyst with an LLB University of London and an LLM from the University of Colombo. Her academic and professional interests are centered on anti-corruption, governance, public accountability, and the legal frameworks that shape democratic institutions. Her work reflects a commitment to promoting transparency, strengthening democratic accountability, and contributing to informed public discourse on matters of national importance.

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## ABSTRACT

The Anti-Corruption Act, No.9 of 2023 consolidates previously fragmented laws by repealing its predecessor such as the Bribery Act of 1954, the old CIABOC Act and the Declaration of Assets and Liabilities Law No 1 of 1975- this streamline of definitions and repeal of law aligns domestic law with the United Nations Convention against Corruption (UNCAC). This study explores the pivotal nexus between Anti-Corruption laws in Sri Lanka and State Capture, focusing on the constitutional, institutional and national security aspects of corruption. In hope of attempting to define state capture as a systematic subversion of democratic governance, public interest and legal accountability, moving away from boxing it under a simple kind of grand corruption. In order to fully understand, this study examines the emergence of Anti-Corruption law as a global response to state capture, situating Sri Lanka experiences within the context of the international commitments, internal constitutional principles and sociopolitical realities. In order to tie, the study fully, it draws inspiration from the Singaporean model by closely examining the Prevention of Corruption Act 1960 and the Corrupt Practices Investigation Bureau (CPIB) which is fast becoming the benchmark of institutional integrity, operational independence and political will by taking the stand of portraying corruption as a threat to national security rather than a legal violation. Thereby, this study intends to examine the possibility of redefining Anti-corruption enforcement as a constitutional imperative in order to maintain the sovereignty, democratic legitimacy and the rule of law, leading to redefining state capture in Sri Lanka as a constitutional and national security threat.

*Keywords:*

Anti-Corruption Act 2023, State Capture, Singapore CPIB, Constitutional Governance,  
National Security.

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|        |  |
|--------|--|
| ACA    | Anti-Corruption Act No.9 of 2023                               |
| PCA    | Prevention of Corruption Act of 1960                           |
| CPIB   | Corrupt Practices Investigation Bureau                         |
| IMF    | International Monetary Fund                                    |
| UNCAC  | United Nations Convention Against Corruption                   |
| CIABOC | Commission to Investigate Allegations of Bribery or Corruption |

## CHAPTER I

### INTRODUCTION

#### 1.1 Background and Significance

State Capture is one of the most notable insidious kinds of systemic corruption seen in the modern day, in which elite or private interest misuse the public power vested to them to alter laws, policies and institutions to their advantage. In this light, state capture, unlike episodic or petty corruption, significantly affects the states constitutional framework by weakening the separation of power, jeopardizing the independent of public institutions and as a result of which ultimately leading to the distorting of rule-based governance. This is far more detrimental than a mere governance failure; it is a fundamental danger to the very constitutional order and national sovereignty as a whole.

In Sri Lanka, the legal sphere has come a long way, with the recent enactment of the Anti-Corruption Act No 9 of the 2023, which was significantly repealed and consolidated from its predecessors, the Bribery Act of 1954 and the Declaration of Assets and Liabilities Law of 1975. Both of which fell short in addressing certain areas of corruption that ultimately lead the legislation to be merely symbolic rather than enforceable. One of the detrimental factors being, institutional weaknesses- particularly in terms of prosecutorial independence, enforcement ability which are key institutions to political influence which stood as a fixed hindrance to good governance.

The continuity of unjust enrichment of the elite interest, within the state mechanism, largely contributed and drove the erosion of the lack of public trust seen in society to this day. This also continued to act as a catalyst for the mass civil uprising, the most notable being the Aragalaya movement 2022 that demanded the overthrow of the government and President Gotabaya Rajapaksa resignation. Which arose as a collective public outcry against the widespread corruption and the economic crisis that took the lives of many. The Aragalaya movement received significant international recognition that put the nation under the spotlight, calling for a refocus of attention on corruption as a problem of public morality, constitutional crisis and detrimental to national security.

By contrast, Singapore's Anti-Corruption architecture which stems from the Prevention of Corruption Act of 1960 (PCA), which was implemented by the Corrupt Practices Investigation Bureau (CPIB), stands to amplify how corruption can be contained through effective legal presumptions, which are driven by institutional independence and a strong political will. Most remarkably, the Singaporean governance model sets the benchmark as it views corruption in the light of a direct threat to national security- an existential challenge to state legitimacy. In order to combat corruption, the nation incorporates Anti-Corruption enforcement within the larger framework of its state protection.

The Aragalaya movement, and the broader national security crisis, set the tone for nation and its people to begin to comprehend how state capture evidently erodes and undermines the constitutional governance in Sri Lanka which eventually led to the enactment of the Anti-Corruption Act No 9 of 2023 in the midst of international pressures by the International Monetary Fund (IMF) and domestic demands for reform. This study intends to examine whether corruption related state capture can be determined as a justiciable

constitutional threat, using the Singaporean model and the institutional framework to propose an institutional, doctrinal and policy-based reform. It intends to propose the question, using comparative and doctrinal legal analysis whether Sri Lanka's anti-Corruption regime could be reframed as a constitutional weapon in order to restore democratic legitimacy, national security and judicial accountability rather than only have it as a means of criminal law mechanism.

The significance of this study at its core is the attempt to reposition anti-corruption laws in the context of constitutional governance and thereby state resilience, bleeding into a recommending a change that is beyond reactive enforcement at its surface and more towards proactive institutional and normative legislations. This change essentially maintains that genuine reforms goes beyond legislative enactment; it requires envisioning corruption as an existential threat to the nation, calling for legal remedies which are appropriate to the gravity of state capture.

## **1.2 Objective of this Study**

This Study is driven by the desire to examine and understand the structural and normative flaws currently in Sri Lanka's Anti-corruption policy that has given way for state capture to continue as a systemic danger to constitutional governance. Taking into account that the Anti-Corruption Act 2023 represents a step forward in the legislative dimension, the important gaps remain evident, such as addressing institutional independence, enforceability and prosecutorial autonomy- detrimental factors that continue to play a part in the societal undermining of public trust and democratic accountability. In this context,

this study uses the comparative constitutional lens in order to assess Singapore's Prevention of Corruption Act (PCA) and the Corrupt Practices Investigation Bureau (CPIB) as the golden benchmark for institutional effectiveness and good governance.

The Singaporean model addresses corruption in the light of a direct threat to national security instead of a mere violation. Thereby, their model integrates anti-corruption enforcements into the bigger picture of their framework of sovereign protections. In this study, I intend to analyse the possible prospect of reclassifying and recognising corruption induced state takeovers in the Sri Lanka as a legitimate constitutional and national security threat, in order to do so, emphasis the need for a jurisprudential shift in the intuitional and interpretive frameworks.

### **1.3 Methodology**

This study intends to follow a doctrinal legal research approach, which entails a systemic review of legal principles, rules, legislations, case laws and constitutional provisions which are related to anti-corruption and state capture. The doctrinal method presents itself as an appropriate method for this particular research to critically assess the legal texts and institutional structures that support Sri Lanka's and Singapore's anti-corruption framework. The underlying objective is not merely descriptive but evaluative in nature-assessing how law has been formulated, interpreted and operational in eliminating systemic corruption and ensuring constitutional governance. This comparative approach serves a normative and institutional golden benchmark that paves the way to shed light in identifying the best

practices, legislative gaps and the detrimental structural challenges which are essential to the ongoing reforms in Sri Lanka.

This study draws from both primary and secondary sources. The primary sources include legislations, case laws, constitutional provisions, official governmental papers, international legal instruments (e.g., UNCAC) and reports from oversight agencies such as the Sri Lanka's Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and the Singapore's CPIB.

Secondary sources include academic textbook, law commission reports, policy papers, and where available information from legislative discussion, official gazettes and reports involving governance and anti-corruption advocacy are considered. All selected sources are carefully reviewed for legal relevance, doctrinal authority and jurisdictional accuracy.

By using these methods of research, this study intends to develop a coherent, evidence-based understanding for institutional and legal reform in Sri Lanka by combining a comparative and doctrinal method with rigorous engagement of both primary and secondary legal material to better understand constitutional theories and the international best practices.

## CHAPTER II

### THE LEGAL LIMITS OF SRI LANKA'S ANTI-CORRUPTION REGIME IN ADDRESSING STATE CAPTURE

#### **2.1 Contextualizing Sri Lanka's Post 2015 Political Economy and the Rise of Public Resistance.**

At the very core of both the legal and political theory, state capture is the essence of corruption in which the selected elite groups-often identified as business elites, coalition of political actors and institutional insiders, manipulate the state's legal, regulatory and enforcement mechanism in a manner that would serve their private interest at the cost of public welfare and constitutional accountability at large.<sup>1</sup> Different to episodic corruption, which is often contained with individual acts of bribery, state capture affects the root of the fundamental base of governance. It establishes a parallel power of logic that undermines and questions the democratic intuitions from within, bleeding into erosion of formal legalities while maintaining their strait-laced external appearance.

Post 2015 all the way to 2022, Sri Lankas experience and fold of events follow a typical trajectory of systemic corruption that became very evident to the international and domestic society. Following the 2015 presidential transition, that was initially characterised as a progressive constitutional goal that gave hope such as the 19<sup>th</sup> Amendments promises of

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<sup>1</sup> Joel S Hellman, Geraint Jones and Daniel Kaufmann, 'Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition' (World Bank Policy Research Working Paper No. 2444, 2000)

depoliticized governance and the functioning of independent commissions.<sup>2</sup> However the following years these ambitions gradually fell through the cracks. The 20<sup>th</sup> Amendment of the Constitution lead way for the re-centralised presidential authorities, which weakened and shielded decision-makers from scrutiny.<sup>3</sup> The loss of democratic safeguards that resulted by this decision paved way for the combination of political favouritism and the financial mismanagement that eventually blew up as the economic crisis, culminating in unsustainable national debt and national widespread public procurement violations.<sup>4</sup>

This background set the tone for fertile ground for the phenomena of the concept of state capture to emerge- not just through the co-optation of the regulatory bodies but also through the politicisation of the oversight bodies, which played a role in stalling anti-corruption enforcements and instrumentalization of the law for elite protection.<sup>5</sup> These mistakes cannot be justified as unintentional, but rather political moves that was backed constructional and legal structures that highlighted the lack of adequate safeguard measures against internal subversion.

The Aragalaya movement in 2022, marked the rupture in this trajectory. The evidence of which was seen in, what started as a spontaneous protest that arose around the fuel shortage and the economic crisis that grew into a communal, extra intuitional cry of constitutional

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<sup>2</sup> Mario Gomez, 'Sri Lanka Democratic Spring: The 19th Amendment and Constitutional Reform' (2015) Law & Society Trust Review 15(2) 12–16.

<sup>3</sup> The Return of Sri Lanka's Imperial Presidency: The Twentieth Amendment to the Constitution Bill <https://constitutionnet.org/news/return-sri-lankas-imperial-presidency-twentieth-amendment-constitution-bill>

<sup>4</sup> International Monetary Fund, *Sri Lanka: 2023 Article IV Consultation – Staff Report* (IMF Country Report No. 23/134, 2023) paras 3–9.

<sup>5</sup> Joel Hellman, Geraint Jones and Daniel Kaufmann, 'Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition' (World Bank Policy Research Working Paper No. 2444, 2000) <https://documents1.worldbank.org/curated/en/537461468766474836/pdf/multi-page.pdf>

frustration. The occupational of the Presidential Secretariat became the very embodiment of the reclaiming of people's sovereignty over the mechanism of the seized governance.<sup>6</sup> The Aragalaya was not a mere cry for cosmetic reform; rather it was the evidence of the grassroots constitutional uprising in the defence of a republic fight against the threat of the elite misrule. The turn of events showcased the extent to which the legal system had fallen short and become complicit in state dysfunction- not due to the absence of law but rather due to the erosion of its enforceability and independence.

From a doctrinal standpoint, these series of events call for corruption to be reclassified as a justifiable threat to the very essence of constitutional governance and the integrity of national security, which goes far beyond a mere criminal offense. The problem is not merely simplified to punish the act of corruption but also to remove its embeddedness in the root of state architecture.

## **2.2 Overview of Sri Lanka's Legal Framework on the Anti-Corruption Act 2023**

Following the aftermath of the Aragalaya movement in the midst of international pressures from the (IMF) and the domestic demands the Sri Lankan anti-corruption legal framework enacted the Anti-Corruption Act No. 9 of 2023. This Act is a product of the repeal of its predecessor the Bribery Act, No. 11 of 1954, the Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994, and the Declaration of Assets and Liabilities

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<sup>6</sup> Asanga Welikala, 'Constitutional Reform and Crisis in Sri Lanka' [http://constitutionalreforms.org/wp-content/uploads/2021/07/CC\\_Book-full.pdf](http://constitutionalreforms.org/wp-content/uploads/2021/07/CC_Book-full.pdf)

Law, No. 1 of 1975.<sup>7</sup> The significance of the Act lies in the signals that points to a change from a disparate statutory tools that was seen to be used as a tool to a cohesive institutional structure that aimed to combine both acts of petty corruption and systemic elite capture. At the very heart, the Act creates a Commission for Anti-Corruption which is then tasked and backed with the power to detect, investigate and prosecute, if necessary, crimes that are not only typical bribery offenses, but also fraudulent and the non-declaration of assets that follows a wide range of “associated offences”.<sup>8</sup>

With these changes, the Act hopes to give way crucially to the commission to have a sense of inherent immunity to political meddling in order to strengthen the protectional independence, in order to address a fundamental institutional vulnerability that is often seen in instances of state capture.<sup>9</sup> As a response to the threat of elite entrenchment, the Act imposes a stringent responsibility of assets and liability declaration on public officials and now it is extended to the private sector, which is now built into a centralized electronic system that includes the publication of said assets to the general public and fines for noncompliance.<sup>10</sup> Significantly beyond the punishment, the Act also entrust the Commission with the pre-emptive ability to examine administrative systems, thereby monitoring government policies and recommending legislative reforms, that would pave the way of treating corruption as a structural governance issue.<sup>11</sup>

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<sup>7</sup> Anti-Corruption Act No 9 of 2023, s 174 (repeal provisions); Bribery Act No 11 of 1954 (Sri Lanka); CIABOC Act No 19 of 1994; Declaration of Assets and Liabilities Law No 1 of 1975.

<sup>8</sup> Anti-Corruption Act No 9 of 2023, ss 2–4, 42–50.

<sup>9</sup> *ibid* ss 4-6, 17–19.

<sup>10</sup> *ibid* ss 132–150.

<sup>11</sup> *ibid* ss 36–39; see also Commission to Investigate Allegations of Bribery or Corruption (CIABOC), ‘The Anti-Corruption Act No. 9 of 2023 Outlines Various Powers and Functions’

<https://www.ciaboc.gov.lk/functions/prevention/directives/1269>

This shift is pivotal, as it explicitly aligns the objectives of the Act directly with international commitments to the United Nations Convention Against Corruption (UNCAC)<sup>12</sup> and with that it provides and assist cross-border cooperations and the non-conviction based asset recovery,<sup>13</sup> the legal framework significantly reflects this paradigm shift: treating grand corruption as not merely a criminal law threat but a threat to the very national governance and the constitutional order. This evolution sheds light on the significance of the growing recognition of corruption in Sri Lanka, in particular to forms of state capture, a fundamental systemic phenomenon- which requires a legal tool that is preventive, prosecutorial and institutionally embedded in the very heart of the boarder architecture of constitutional resilience.

### **2.3 Doctrinal Gaps in the Anti-Corruption Act 2023**

Acknowledging the Anti-Corruption Act No 9 of 2023, represents a substantive shift in the legislative framework in Sri Lanka, there are yet critical doctrinal and intuitional flaws that hinder the ability to combat grand and systemic corruption, ultimately state capture.

Doctrinally, there are numerous provisions that are vague in the ACA. Notably, the Act fails to define the term of “Conflict of interest” which leaves the interpretation of it open and subjective to many, undermining the consistency of enforceability and transparency.<sup>14</sup>

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<sup>12</sup> ACA 2023, Preamble and s 3(b); see also United Nations Convention against Corruption (UNCAC) (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.

<sup>13</sup> ACA 2023, ss 154–156; see also Unravelling the Human Rights Implications of Sri Lanka's New Anti-Corruption Law <https://ohrh.law.ox.ac.uk/unravelling-the-human-rights-implications-of-sri-lankas-new-anti-corruption-law/>

<sup>14</sup> New civil society report on Sri Lanka: Need for strengthened implementation, oversight, and accountability in Sri Lanka's anti-corruption framework <https://uncaccoalition.org/uncacparallelreportsrilanka/>

Similarly, acknowledging that the asset declaration laws have been significantly strengthened, the gap is evident in place of the lack of centralised beneficial ownership registry which provides powerful actors the ability to conceal illicit wealth using proxies and shell companies.<sup>15</sup> Furthermore, the Act falls short as it does not codify strong presumptions of any illicit enrichment or shift the burden of proof in cases of ‘unexplainable wealth’ cases which significantly limits the ability to prevent elite corruption.

Another gap comes into play in place of the provision in section 119, which essentially criminalises knowing false allegations<sup>16</sup>, which can be argued as a big win for the anti-corruption regime. However, even though the provision intends to combat malicious reporting, the question arises as it risks the possibility of silencing whistleblowers and investigative journalist. This uncertainty arises tension that points to concerns under Article 14(1)(a) of the Sri Lankan Constitution which enshrines the freedom of expression.

Institutionally, while the ACA backs the Commission prosecution jurisdiction, the issues regarding the operation remaining independent persist. This arises in place where structural safeguards, such as a financial autonomy and tenure security are significantly lacking which makes the Commission vulnerable to political pressures and manipulations. These concerns were evidently echoed in the recent case of *Attorney General v Ravi Karunanayake*, in which the Supreme Courts of Sri Lanka ruled that prosecutorial discretions must not in any means be used to justify impunity in matters that involve the

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<sup>15</sup> *ibid.*

<sup>16</sup> Anti-Corruption Act No 9 of 2023, s 119

public interest.<sup>17</sup> However, under the ACA, there are no express judicial mechanism for the reviewing of intuitional inactions of high-profile probes.

Lastly, the Commissions preventive capability such as a auditing legislation and monitoring policies, evidential lacks procedural enforcement which leads to the limitation of their effectiveness against systemic corruption. Without which proactive oversight mechanism and the interagency cooperation and inter-agency cooperation, the ACA's preventive arm stands at being underutilized.<sup>18</sup>

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<sup>17</sup> *Attorney-General v Ravi Karunanayake* SC Appeal 104/2024 (SC, 7 June 2025).

<sup>18</sup> CIABOC (n 4).

## CHAPTER III

### SINGAPOREAN MODEL – PCA, CPIB & ANTI-CORRUPTION AS NATIONAL SAFEGAURD

#### 3.1 Historical and Constitutional Foundation of Singapore’s Anti-Corruption

##### Architecture

Singapore’s anti-corruption architecture is inextricably linked to the larger post-colonial agenda that focuses on state building, meritocratic governance and national resilience. At the very core of this system lies the Corrupt Practices Investigation Bureau (CPIB) which was established in 1952, during the British colonial rule, which later transformed into the politically insulated and operational mechanism which passed the Prevention of Corruption Act (PCA) in 1960, following Singapore’s attainment of self-government that took place in 1959.<sup>19</sup>

The PCA largely remains the primary legislative tool in Singapore’s anti-corruption policy, with its arm of broad investigative powers and stringent liability for both public and private sector offenders.<sup>20</sup> The rise of anti-corruption enforcement as a national policy priority could be traced back to Prime Minister Lee Kuan Yew’s Constitutional vision that essentially established corruption not as a mere criminal offense, but an existential threat

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<sup>19</sup> CPIB, ‘History of the CPIB’ (Corrupt Practices Investigation Bureau, 2022)

<sup>20</sup> Prevention of Corruption Act 1960 (Revised Edition 1993) (Singapore), ss 5–13

to the state's very survival.<sup>21</sup> Prime Minister Lee frequently voiced in his lectures and in his writings that legitimacy must be gained through a clean government and intuitional integrity that is, ethnically diverse, newly independent society.

As a result, the regime of anti-corruption was embedded not only in statute but also in Singapore's administrative law, the public service code of conduct and the larger constitutional fabric as a whole- seen by the close relationship between legal enforcement, political intent and meritocratic civil service structures.<sup>22</sup> Scholars have remarked that the Singaporean model rejects populist legalism in light of a comprehensive, centralized and preventive anti-corruption ideology in which law enforcement serves as a both a criminal instrument and a mechanism of sovereign in self-preservation.<sup>23</sup>

In the time span of a generation, Singapore was swiftly transformed from a corrupt colonial port to one of the world's most transparent and legally stable nations which is attributed to its unique framework. Empirical statistics from Transparency International to the World Bank affirms Singapore's persistent ranking as one of the least corrupt nations in the world. This praise is commonly credited to the early legal and institutional foundation that was created in the 1960s.<sup>24</sup> The PCA and the CPIB are not seen as stand-alone tools, rather a

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<sup>21</sup> Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (HarperCollins 2000) 182–190 [https://www.intuganda.org/wp-content/uploads/kanzu\\_intug/class24/From-Third-World-to-First-World-The-Singapore-Story-1965-2000-Lee-Kwan-Yew.pdf](https://www.intuganda.org/wp-content/uploads/kanzu_intug/class24/From-Third-World-to-First-World-The-Singapore-Story-1965-2000-Lee-Kwan-Yew.pdf)

<sup>22</sup> Jon S T Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* (Emerald Publishing 2011) ch 2. <https://www.emerald.com/books/edited-volume/14279/chapter/85198550/Curbing-Corruption-in-Asian-Countries-An>

<sup>23</sup> Nicholas Lim Kah Hwee, 'SINGAPORE'S EXPERIENCE IN THE FIGHT AGAINST CORRUPTION' [https://www.unafei.or.jp/publications/pdf/GG11/23\\_GG11\\_CP\\_Singapore2.pdf](https://www.unafei.or.jp/publications/pdf/GG11/23_GG11_CP_Singapore2.pdf)

<sup>24</sup> Transparency International, *Corruption Perceptions Index 2023* <https://www.transparency.org/en/cpi/2023/index/sgp>  
Bank, *Worldwide Governance Indicators (2022): Control of Corruption – Singapore* <https://databank.worldbank.org/source/worldwide-governance-indicators>

component of a constitutionalised approach to combat anti-corruption, through which the rule of law, administrative efficiency and the political commitment are matched to neutralise and combat systemic corruption before it leads to a state takeover.

### 3.2 Overview PCA and the CPIB Model

Singapore's Prevention of Corruption Act 1960 (PCA) and its enforcement agency, the Corrupt Practices Investigation Bureau (CPIB), together form a legally cohesive and operationally integrated anti-corruption framework which serves not only for punitive purposes but also as a constitutional safeguard to combat state capture. The PCA has a broader doctrinal scope, like Section 5 and 6 that enshrines the criminalisation of both offering and accepting gratification in a private and public setting. Section 8 goes on to establish that prosecution is allowed even if the act is not completed which creates a strong deterrent framework.<sup>25</sup>

The Act is largely significant for imposing a reversal for the element of the 'burden of proof'- whereby the accused must disprove corrupt intent once gratification is proven, a feature that was upheld in *PP v Teo Chu Ha (2001)* SGDC 243 as appropriate to the gravity of the said offense.<sup>26</sup> This conceptual move re-aligns with the evidentiary standard to reflect the asymmetrical nature of corruption through which institutional insiders wielded information and procedural weight and upper hand. Furthermore, the PCA's extra-

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<sup>25</sup> Prevention of Corruption Act 1960 (Revised Edition 1993) (Singapore), ss 5–6

<sup>26</sup> *Public Prosecutor v Teo Chu Ha* [2001] SGDC 243 (District Court, Singapore); see also Ho Hock Lai, *A Philosophy of Evidence Law: Justice in the Search for Truth* (OUP 2008) ch 7  
<https://philarchive.org/rec/HOAPO>

territorial scope established in Section 37 which extends culpability to acts conducted overseas by Singaporean nationals or offenses which involves the Singaporean government, which strengthens and provides accountability in cross border transactions that are frequently used as elite collusion schemes.<sup>27</sup>

The CPIB, was constituted under the PCA and is directly answerable to the Prime Minister who has investigative authority independently to the Parliament and Public Service Commission.<sup>28</sup> Unlike many of the anti-corruption agencies in the region, the CPIB has the authority to call and conduct investigations without a formal complaint, which is significant to the intuitional framework in order to combat systemic or structural corruption.<sup>29</sup> A case that showcases this is the *PP v Tan Kian Lian (2005)* SGDC 122, the CPIB's discretion to be able to examine high-ranking members of public service was upheld as a consistent with the rule of law and administrative justice.<sup>30</sup> Furthermore, the Bureau's autonomy in recruitment, prosecutorial coordination and forensic investigation demonstrates a deliberate separation from politics- a critical shift from deconstructing the entrenched influence networks that characterises state capture.<sup>31</sup>

From a comparative perspective, the Singaporean framework, conceptualised corruption as a security threat and not merely a legal violation. The CPIB is organised not as a public compliant office but it stands a constitutional sentinel which is charged with preventing

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<sup>27</sup> Exporting Corruption 2022: Assessing Enforcement... - Transparency.org  
<https://www.transparency.org/en/publications/exporting-corruption-2022>

<sup>28</sup> CPIB, 'About Us – Independence and Mandate' (Corrupt Practices Investigation Bureau)  
<https://www.cpi.gov.sg/who-we-are/our-work/roles-functions/>

<sup>29</sup> *ibid*; see also OECD, *Effective Anti-Corruption Agencies: The Singapore Experience* (OECD Public Governance Review 2021) 14–18.

<sup>30</sup> *Public Prosecutor v Tan Kian Lian* [2005] SGDC 122.

<sup>31</sup> OECD (n 5) 17–19

corruption from eroding state legitimacy, public trust and economic governance. As Jon S T Quah, who is a legal expert pointed out, “Singapore treats corruption as a lethal virus to the body politic; its legal architecture is accordingly preventive, swift, and uncompromising.”<sup>32</sup> The preventive reasoning that backs this idea is the fundamental consistent with anti-capture theory: State capture flourishes and thrives in an environment where intuitions are fragmented, enforcement is selective and legal norms are vague. The Singaporean model, on the flip side combines rigid legal definitions, coupled with evidentiary presumptions and centralised enforcement in order to protect the state from elite appropriation.

### **3.3 Anti-Corruption as a Tool of Sovereignty and National Security**

Singapore’s anti-corruption strategy is centred on a unique national philosophy: Corruption is more than a mere administrative flaw or a criminal violation; it is a strategic threat to the sovereignty, state legitimacy and the long-term economic viability. Since its inception that followed after independence, the Singaporean state has focus on pursuing an anti-corruption agenda within the broader context of defensive constitutionalism, in which the legal intuitions are purposely build in place to ensure national resilience.<sup>33</sup>

This viewpoint is based on the concept that as for a small, resource-constrained, multi-ethnic state which is vulnerable to geopolitics and economic shocks, investor confidence, public trust and bureaucratic integrity, which are critical assets. According to Lee Kuan Yew,

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<sup>32</sup> Jon S T Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* (Emerald Publishing 2011)

<sup>33</sup> See Jon S T Quah, *Curbing Corruption in Asian Countries: An Impossible Dream?* (Emerald Publishing 2011) 89–90.

"corruption will erode our society... [and] eventually destroy the country,"<sup>34</sup> which inherently emphasises the importance of anti-corruption enforcement for national survival, not just limited to government. Thereby as a result, Singapore's PCA and CPIB are intended to be institutional preventive tools that are placed to strengthen the rule of law, meritocracy and economic stewardship rather than be limited to symbol of a reactive instrument.<sup>35</sup> The doctrinal rigorousness (e.g., evidentiary presumption under PCA S 8) and the intuitional autonomy (CPIB's direct reporting to the Prime Minister) depicts that the legal framework is not only concerned about punishing corruption but preserving the constitutional integrity through regulatory immunisation.<sup>36</sup> Singapore's legal system exemplifies sovereignty protective legalism, which equates clean governance with state capability erosion.<sup>37</sup>

This security-centred perspective is backed by the Singapore's extensive incorporation of anti-corruption norms throughout the administrative, governmental and social landscape. The state uses a number of complementary methods which include integrity pacts in public procurement, very strong and foundational civil service ethnic rules and mandatory conflict of interest declarations, along with regular ethics and compliance training for public officers.<sup>38</sup> These tools are not purely symbolic; they are part of a structured behavioural environment that balances the legal requirement with the expected cultural requirements.

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<sup>34</sup> Lee Kuan Yew, *From Third World to First: The Singapore Story 1965–2000* (HarperCollins 2000) 162–165.

<sup>35</sup> Prevention of Corruption Act 1960 (Revised Edition 1993) (Singapore); see also CPIB, 'About Us – Our Mandate'

<sup>36</sup> PCA s 8 (presumption upon receipt of gratification); see also OECD, *Effective Anti-Corruption Agencies: The Singapore Experience* (OECD 2021).

<sup>37</sup> JST Quah, *Combating corruption in Singapore: a comparative analysis of two scandals* 2020

[https://www.researchgate.net/publication/346255809\\_Combating\\_corruption\\_in\\_Singapore\\_a\\_comparative\\_analysis\\_of\\_two\\_scandals](https://www.researchgate.net/publication/346255809_Combating_corruption_in_Singapore_a_comparative_analysis_of_two_scandals)

<sup>38</sup> CPIB, 'Corruption Prevention – Measures' <https://www.cpiib.gov.sg/about-corruption/prevention-and-education/prevention-of-corruption/>

The CPIB also has a core educational mission, engaging school, universities and civil societies through which awareness campaigns, public reporting portals and outreach programmes are established.<sup>39</sup> Singapore is remarkable as it has created a legal culture of minimal tolerance through which it encourages enforcement with legitimacy. Most importantly, this multi-pronged approach promotes a compliance-based structure of governance through which transparency and deterrence are embedded at its core in the administrative conduct rather than simply being imposed through punitive actions.<sup>40</sup>

In contrast, Sri Lanka's Anti-Corruption Act 2023, formalizes enforcement and preventive capabilities, however it lacks a comparably comprehensive compliance framework.<sup>41</sup> It remains primarily prosecutorial in nature, with a few strategies that involves the public, ethical training or institutionalised behaviour modifications. This disparity sheds light on the fact that Sri Lanka's legal reaction remains to view corruption as an isolated incident rather than a systemic threat to the state's constitutional and democratic foundation. In comparison to the Singaporean mode which provides a compelling normative blueprint for the conceptualising anti-corruption as a sovereignty-preserving, constitutionally embedded public function- an approach that Sri Lanka could seriously consider if it is to dismantle elite driven state capture in order to restore legitimacy back to public governance.

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<sup>39</sup> *ibid*; see also Public Service Division Singapore, 'Public Sector Governance' (PSD 2023) <https://www.psd.gov.sg/>

<sup>40</sup> OECD (n 4) 16–17

<sup>41</sup> Anti-Corruption Act No 9 of 2023 (Sri Lanka), ss 36–39 (preventive powers)

### 3.4 Relevance and Transferability- Lesson for Sri Lanka

Having established that Singapore’s anti-corruption is based on a jurisprudential tradition that is set to regard corruption as a systemic danger to the governmental legitimacy as a whole. The PCA operates with a reversal burden of proof under Section 8 as demonstrated in *Public Prosecutor V Teo Chu Ha (2001)* which allowed the courts to overcome evidentiary asymmetries in institutional corruption.<sup>42</sup> Following the decision in *Public Prosector v Tan Kian Lian (2005)*<sup>43</sup>, in which place the judiciaries commitment to non-selective enforcement upheld legal equality even against politically connected personals. This is a stark contrast to the Sri Lanka’s selective prosecutions, which is seen in the case of *AG v Ravi Karunanayake* SC Appeal 104/2024, in which the lack of prosecutorial reviewability concept directly undermines the intuitional confidence.<sup>44</sup>

Translating these lessons into Sri Lankan law necessitates a rethinking of institutional architecture and constitutional aim. The CPIB models structural independence- its ability to investigate on its own and its direct reporting to the Prime Minister without interference along with its operational specialisation, stands out as a stark contrast to Sri Lanka’s CIABOC, which despite formal independency given by the 2023 ACA, still remains to entangle itself in bureaucratic and political dependencies.<sup>45</sup> Similarly, Singapore’s evidentiary presumption in illegal enrichment presents Sri Lanka with a conceptual solution for the Sri Lankan prosecutors under the traditional burden of proof. Nevertheless,

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<sup>42</sup> *Public Prosecutor v Teo Chu Ha* [2001] SGDC 243.

<sup>43</sup> *Public Prosecutor v Tan Kian Lian* [2005] SGDC 122

<sup>44</sup> *Attorney-General v Ravi Karunanayake* SC Appeal 104/2024 (SC, 7 June 2025) (Sri Lanka).

<sup>45</sup> Anti-Corruption Act No 9 of 2023 (Sri Lanka), ss 4–6; CPIB, ‘Independence and Mandate’

such a legal process could only be effective in place of a supportive political commitment and judicial cooperation, both of which is lacking in Sri Lanka's government architecture.

As a result, acknowledging that Sri Lanka may not typically mimic Singapore's model, the normative shift it holds is critical. Anti-corruption legislation must thereby be reframed as not only a tool of punishment but more so an active defender of the constitutional integrity and the nations sovereignty. Singapore's success is not credited to the legal text alone but it ties together with how the courts, political cultures and institutions work together to operationalise the law to be a structural defender against elite capture. Having established that, unless Sri Lanka shifts from a reactive legalism to a sovereignty-focused, doctrinal resilient structure, the countries anti-corruption regime will merely be aspirational and symbolic rather than transformative.

## CHAPTER IV

# REFRAMING STATE CAPTURE AS A CONSTITUTIONAL VIOLATION IN SRI LANKA

### 4.1 The Concept of State Capture

With the evolution of the legal sphere, State capture is defined as a systemic form of corruption through which narrow elites control policies, laws and public institutions for their own private advantages which inherently undermines the democratic and constitutional governance. Unlike the traditional transactional bribery, that takes places inside a functional system, state capture disrupts the whole system using influence in the administrative, judicial and legislative processes. Scholars like Hellman, Jones and Kaufmann characterised state capture as "the efforts of firms or individuals to shape the formation of laws, regulations, and other government policies to their own advantage through illicit and non-transparent means."<sup>46</sup>

In Sri Lanka, the persistent misuse of the regulatory discretion that is very evident in public office in preferential procurement and politicised appointments exemplify the systematic conditions which are directly prone to capture. These influences are not peripheral but rather centralised within the core architecture of governance, the best example of which is seen by the post 2015 economic decision making and the turn of events that led to the

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<sup>46</sup> Joel Hellman, Geraint Jones and Daniel Kaufmann, *Seize the State, Seize the Day* (World Bank Policy Research Paper 2444, 2000) 2–3.

<https://documents1.worldbank.org/curated/en/537461468766474836/pdf/multi-page.pdf>

public's response during the 2022 Aragalaya movement.<sup>47</sup> Systemic corruption is seen as an existential concern in international jurisprudence; in the case of *Lopes v Portugal (2010)*, the European Court of Human Rights warned of the consequences of entrenched elite control of judicial institutions.<sup>48</sup>

#### 4.2 Overview of Chapter III of the Constitution

Chapter III of Sri Lanka's Constitution which enshrines the Fundamental Rights holds a collection of inalienable legal protections which includes Article 12: "Right to Equality". Article 12 (1) establishes that "all persons are equal before the law and are entitled to equal protection of the law."<sup>49</sup> This provision forbids arbitrary or discriminatory treatment by which the state while also requiring fairness and non-discrimination by and before the law, administrative actions and any procedural frameworks. Most significantly, Article 12 (1) serves as a constitutional constraint on the executive, legislative and the administrative powers by which the standards for determining whether state actions are and can be captured or corrupted elite influence.

In order to fully comprehend on how Article 12 (1) operates, it is essential to consider its jurisprudence. In the case of *Ramupillai v Minister of Public Administration*, the Supreme Courts of Sri Lanka ruled that in Article 12 (1), it requires that persons in similar circumstances must be treated equally; the "equal protection" component which is

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<sup>47</sup> A Brief Analysis of the Aragalaya - Centre for Policy Alternatives [https://www.cpalanka.org/wp-content/uploads/2023/05/A-Brief-Analysis-of-the-Aragalaya\\_Final-Report.pdf](https://www.cpalanka.org/wp-content/uploads/2023/05/A-Brief-Analysis-of-the-Aragalaya_Final-Report.pdf)

<sup>48</sup> *Lopes v Portugal* App no 5613/10 (ECtHR, 20 July 2010).

<sup>49</sup> Constitution of the Republic of Sri Lanka, 1978 (as amended), Article 12(1)

imposed, places a duty on the state not to only refrain from any discriminatory legislations but also to ensure that rights vest to life is equally accessible in practice.<sup>50</sup> In the same manner, in the case of *Palihawadana v. Attorney General* the courts ruled and recognized that the rights applies not just to *de jure equality* (laws on the book) but also in place of *de facto equality*: access, opportunity, resources and procedural fairness which must not be influenced by ones political afflictions, connections, religion or power.<sup>51</sup> The most significant step forward is the Sri Lanka's Supreme Court's 2023 decision against the Rajapaksa government and the other and holding them responsible for the economic mismanagement, shed light on that larger scale fiscal misgovernance violated the fundamental rights of persons under Article 12(1), by disadvantaging the society at large and allowing privileged elites to escape accountability and hide behind power.<sup>52</sup>

### 4.3 State Capture through the Lens of Article 12(1)

Viewing state capture and understanding it through the lens of Article 12(1) provides an invaluable legal tool: state capture in its truest form is a systematic corruption, which frequently manifest as different treatments often laws or practices that unjustly enriches the elite. All the while it significantly marginalises the vulnerable and underprivileged communities, allowing some to circumvent procurement rules, avoiding scrutiny. Article 12 (1), when properly constructed can significantly challenge such activities as

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<sup>50</sup> *Ramupillai v Minister of Public Administration* (1991) 1 Sri L R 11.

<sup>51</sup> *Palihawadana v Attorney General and Others* (1978-79-80) 1 Sri L R 65.

<sup>52</sup> "Sri Lanka top court rules Rajapaksa brothers guilty of economic crisis"  
<https://www.rfi.fr/en/international-news/20231114-sri-lanka-top-court-rules-rajapaksa-brothers-guilty-of-economic-crisis>

infringement of equal protection. For an example, regulations which grant broad exemptions to wealthy corporation, procurement procedures with secretive evaluations that would favor connected parties and regulatory agencies through which selective rules start to apply which could possibly be justified under Article 12(1).

Having understood all the above, the doctrine of Article 12(1) does have several limitations. Significantly, when discrimination is charged, the courts of Sri Lanka often need a demonstration of reasonable classification or understandable differentia. This places such a heavy weight on the burden of proof where the claimant must now frequently identify individuals in the identical position and showcase how they were handled differently. This puts a strain on the people who is claiming state capture, as elites often are in a position where they are able to conceal or organize acts in a way that would avoid obvious visible classifications. In many cases, the elite capture occurs through the grey matters, which is often administrative discretion, lax enforcement and the lack of transparency, all of which is significantly more difficult to challenge under the usual lens of Article 12(1).

Another hurdle, is that Article 12(1) must be applied in individual or environmental claims rather than a systemic challenge to institutional wrongdoing. This stance raises the question, whether Article 12(1) can shed any light on the stance of state capture in Sri Lanka. The economic crisis lawsuit, which is the Rajapaksa case demonstrates the step forward in the courts willingness to investigate macroeconomic politics in the context of equal protection. However, the consistent jurisprudence which are holding intuitions such as executive branches and public boards are liable under Article 12(1) for allowing corrupt networks to function and exercise their power in the face of public interest.

To make Article 12(1) of the Sri Lankan Constitution an effective safeguard and efficient in place of state capture, a doctrinal reinterpretation is required in order to account how the elite networks and to untangle their strings in the institutional and legislative procedures. The current framework in place is based on a formal legal neutrality, however systemic corruption exists in places through informal privileges, institutional stagnation and opaque discretions. To which the courts should now start recognising a “elite class distinction”- a politically connected person or corporate entity, who would have preferential access to otherwise regulated outcomes - a visible classification under the equality of law analysis. This would significantly align with the worldwide anti-corruption development such as the Colombian Constitutional Courts, which takes a step to understand the structural inequalities when interpreting the constitutional provisions against systemic corruption.<sup>53</sup>

Furthermore, the component of evidential burden must shift in place of a situation where administrative discretion is excessive and unregulated, which is in most cases of systemic corruption. A primal example of which is, in procurement or licensing regimes, where a rebuttable presumption of unfair treatment could ensure procedural transparency. It also extends to the *locus standi* which falls under Article 12(1) that would ensure that public interest litigation would attack structural inequalities and capture, shifting beyond individualized harm to border areas such as challenging collective constitutional violations. Finally, in place of judicial review, it should include state inactions- in place where oversight bodies or prosecutorial agencies fail to investigate politically exposed individuals, the courts should step in and treat such failures as actionable violations of equal protection.

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<sup>53</sup> Constitutional Court of Colombia, *Sentencia C-150/15* (15 April 2015)  
<https://www.corteconstitucional.gov.co/relatoria/2015/C-150-15.htm>

These changes would reorient Article 12(1) from being a restricted equality clause to a systemic protection against elite-driven government distortion, that would line with the constitutional guarantee of justice and accountability.

#### **4.4 Could State Capture Violate Article 12**

The possible argument that state capture could violate Article 12(1) of the Sri Lankan Constitution, the glorified provisions of equality before the law or the equal protection principle is plausible and appealing, however its success is detrimentally dependent on bridging the substantial doctrinal and jurisprudential gaps.

Article 12(1) establishes that "all persons are equal before the law and are entitled to equal protection of the law."<sup>54</sup> This principle is understood to require that governmental powers be administered impartially and that the legal distinction to be based and decided upon intelligible, objective criteria, opposed to the favouritism discretion. Through which the elite gains privileged access to legislation, regulatory exceptions, procurement contracts or in most instances, sheltered adjudication violating the equality principle by receiving preferential treatment vis-à-vis the general public. Through this understanding, it is possible to establish state capture as a structural violation of equality.

Having stated that, the logical question arises when applying Article 12(1) to state capture. Firstly, Sri Lankan jurisprudence is seen to have limited scope under Article 12(1) by requiring the claimant to identify a cognisable "class" and reasonable differentia, which

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<sup>54</sup> Constitution of the Democratic Socialist Republic of Sri Lanka, Article 12(1). See also *Palihawadana v Attorney General* (1978-79-80) 1 Sri L R 65; *Wijesinghe v Attorney General* (interpreting equal protection).

has been discussed in this study before. The case of *Ananda Dharmadasa & Others v Ariyaratne Hewage & Others*, takes a spin on this matter as the courts ruled that the petitioner was denied advancement without a rational basis, which directly violated Article 12(1).<sup>55</sup> However, such ruling falls through the cracks as it comes under individual admirative laws rather than a collective systemic capture. Despite not having a situation or a case that directly highlights an issue of systemic capture, these pave the way to a broader discussion and understanding. Thereby understanding, that the doctrine's emphasis on rational classification restricts its applicability in practice as the reality of elite capture frequently exploits the grey zones of discretion rather than unambiguous differentiated classes.

Secondly, courts have been seen to be hesitant in hearing challenges which are based on institutional or political power imbalances under Article 12 in the past. The jurisprudence on redressing oversight agencies or bodies omission to investigate corruption as an equality branch was seen to be limited. Meanwhile the landmark Supreme Court's 2023 decision certainly set the foundation to move forward to change through the holding of the Rajapaksa government responsible for the economic mismanagement which was alleged violation of Article 12(1), which upheld that individuals in power shall not prejudice the public, while shielding themselves from accountability.<sup>56</sup> However, while that decision was innovative and applaudable, its consistency and enforcement is still questioned.

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<sup>55</sup> *Ananda Dharmadasa & Others v Ariyaratne Hewage & Others* (SLLR Vol. II 2008) (S. Lanka).

<sup>56</sup> "Sri Lanka top court rules Rajapaksa brothers guilty of economic crisis"

<https://www.rfi.fr/en/international-news/20231114-sri-lanka-top-court-rules-rajapaksa-brothers-guilty-of-economic-crisis>

Thirdly, the evidentiary burden is heavy: proving differential treatment or to prove that elite individuals were dealt with differently, requires access to internal and institutional documents or procurement data, which is often concealed. This exemplified the disparity that inherently and most significantly undermines Article 12(1)'s ability to combat elite capture in practice.

To sum up, through my understanding and evaluation state capture is a constitutional infringement through the lens of equality as per Article 12(1). However, in order to make that theory operational, Sri Lanka's doctrine must evolve to the place that it recognises discrete class defined by access to the state, which would loosen the rigid rational classification" test that favors the procedural and structural reviews, thereby allowing judicial enforcement against state bodies non-action, which would lead to the easing of the evidentiary burden in the context of corruption. All of the above, point to the understanding that without a doctrinal change, Article 12(1) will and may remain a symbolic ideal rather than a constitutional weapon for the combatting and dismantling state capture.

## CHAPTER V

### CONCLUSION AND RECOMMENDATION

#### 5.1 Could Sri Lanka Constitutionally Reframe State Capture?

The core of this study, is to propose whether Sri Lanka can constitutionally reframe “state capture” as a justifiable breach of the Constitution, following the footsteps of Singapore. As established throughout this study state capture, contrary to ordinary corruption is the systemic manipulation of the regulatory and legislative framework by people in power to serve their personal objectives. As a student in the legal field, this question is particularly relevant as the persistent government flaws and generational systemics corruption is a known hindrance to structural improvement. To the extent, Transparency International's 2024 Corruption Perception Index<sup>57</sup> ranked Sri Lanka 121 out of 180 with a score of 32/100, that highlighted the need for treating capture as a constitutional violation, not merely a criminal offense, now more than ever.

A significant fact, which is not widely spoken of is that, the Sri Lankan constitution already provides a doctrinal foundation through which such re-interpretation could happen. Article 3 and 4 of the Sri Lankan Constitution creates the People’s Sovereignty, which is exercised through the legislative, executive and judicial body. If these bodies, are truly perverted to benefit entrenched commercial interest, then that is where sovereignty is compromised. The Supreme courts has repeatedly seen the unfolding of the deprivation of sovereignty as

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<sup>57</sup> Transparency International's 2024 Corruption Perception Index  
<https://www.transparency.org/en/cpi/2024>

a constitutional violation, in particular when evaluating the amendments that evidently shielded office holders from being held accountable. A stark parallel to which is Article 12(1), through which the guarantee of equality before the law and the equal protection through the law is established, which also provides a substantive check on the discriminatory actions of the state. The best example of that theory being acted out in reality is the 2023 economic crisis litigation. The ruling of the Supreme Courts to rule that the executives in government and public office violated both the public trust and equality that significantly impacted the whole nation that led to the deaths of many civilians. This is the same rationale that applies to state capture, through which the definition establishes a regime of unjustifiable benefits for a few, while harming many.

The doctrine of public trust, which was most famously enshrined in the ruling of *Bulankulama* (Eppawala)<sup>58</sup> that strengthen this stance. The ruling stated that the state holds the public resources in trust for the people, therefore it places fiduciary duties on decision makers. State capture, which involves giving up regulatory choices or the public resources in return for the private gains, is the best example of the classic breach of this fiduciary duty. Furthermore, Chapter IV of the Sri Lankan Constitution and Article 28(d), while not directly justiciable, expresses directive principles and the duties that demand the preservation of public property and the prevention of the abuse of authority or public office. These provisions when interpreted in the right light as interpretive aids, bolster the constitutional case that systemic corruption is incompatible with an equitable, free and just society. Thus, it reinstates my proposed question that the current constitutional text,

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<sup>58</sup>Bulankulama and six others v. Ministry of Industrial Development and seven others  
<https://www.globalhealthrights.org/wp-content/uploads/2014/09/Sri-Lanka-Bulankulama-v.-Ministry-of-Industrial-Development-eppawala.pdf>

combined with the judicial interpretation has already provided the conceptual space to be able to treat state capture as a constitutional violation.

The jurisprudential road to the eventual recognition, could be paved through the basic rights lawsuit under Article 126. The courts have already accessed policies for arbitrariness and the evident irrationality, which is evident in the economic crisis case. Therefore, the same approach could be used in order to identify influenced policymaking as unconstitutional. In this light, state capture can be characterized as a violation of Article 12(1) since the rules and regulations applied under capture offers an element of illegitimate and personalized benefits to certain individuals. This could also be interpreted as an alienation of the principle of sovereignty under Article 3 and 4 of the Constitution, in which place law making is enshrined. Lastly, it can also be contested as a breach of public trust as a whole, extending from *Eppawala's*<sup>59</sup> fiduciary reasoning to policy makers that are heavily influenced by private interest.

Importantly, and yet most evidently Sri Lanka's legislative system has already seen modification to operationalize this constitutional reinterpretation. The ACAC 2023, significantly enhances the CIABOC's investigative and preventive powers, through which it allows access to public authorities practice and processes for corruption conducive components. This statutory duty is closely aligning with the constitutional notions of expanded structural scrutiny that goes beyond case specific bribery or corruption. The Proceeds of Crime Act, No 5 of 2025, (POCA) adds an extra layer of protection by allowing non-conviction-based forfeitures and asset managements to unwind corruption even in

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<sup>59</sup> Bulankulama and six others v. Ministry of Industrial Development and seven others

place of criminal proof being elusive. Another step forward is, the Right to Information Act No12 of 2016 which reduces the expense of acquiring evidence by establishing transparency. All of the above, tied together gives the judiciary and any watchdog agency the efficient and effective tools that is needed for detecting, proving and combatting state capture and corruption.

Then the proposed question then becomes whether a formal constitutional change is needed to enshrine this reframing. The courts can and has the executive power to act without the need for an amendment. The interpretative nature and approach is already available, meaning sovereignty, equality and public trust which can be used to judicially assess and evaluate capture influenced and tainted policies or decisions. The 2023 verdict established that the Supreme Courts is willing to scrutinize high level governance through the lens of public trust and equal protection provisions. Having understood that, selective entrenchment may possibly also provide value to protecting the theory from future judicial retreats or political manipulation. A practical step would be for Parliament, for example, could pass an anti-capture provisions that defines this issue thereby strengthening the people's standing to challenge capture, enhancing independence for monitoring organizations and requiring openness in lobbying and political money. The next possible question, of whether such an amendment requires a referendum approval under the Article 83 of the Constitution, depends solely on whether it is then characterised as a classification of sovereignty and equality or a mere substantive change to existing constitutional provisions.

This study attempts to provide a realistic roadmap for reframing. Such as litigation strategies being centered on Article 126 for petitions that directly challenge the quid pro

quo policy making, which can be further backed by evidence from the RTI disclosure and ACA investigations. Preventive reviews that are conducted by the CIABOC under the 2023 Act should be implemented to assess risks in the draft form of rules and procurement frameworks before they get passed to the enactment stage. After which, asset recovery should be rigorously reviewed using POCA's forfeiture process that could breakdown the network of illicit gains and manipulations. This would cause monitoring indicators such as the Corruption Perception Index to track on a yearly basis, and with those results and reports given to the CIABOC to open a platform called 'State Capture Risk Review' or something in those lines which is presented to the general public for educational purposes and also as a means of holding public officials accountable.

## **5.2 Conclusion and Way Forward**

This study intended to critically evaluate how Sri Lanka's anti-corruption law system may be strengthened in order to effectively address and combat state capture, using the valuable insights from the Singaporean model that has set the benchmark for clean governance. The core of this study to shed light on the fact that state capture in Sri Lanka is more than a mere criminal violation, instead it is a structural, direct constitutional threat to the people's sovereignty, equality of the law and most determinately the integrity of the governmental institutions. Through this study, I have unpacked that, while Sri Lanka's Anti-Corruption No.9 of 2023, the Proceeds of Crime Act No5 of 2025 and the Right to Information Act No12 of 2016, have already provided a legal foundation for reform, however those provisions are underutilized when combatting corruption such as systemic, elite driven in governance.

In comparison, the Singapore's Prevention of Corruption Act 1960 and the operational arm of independence of the Corrupt Practices Investigation Bureau (CPIB), portray a proactive and pure security driven approach to how anti-corruption is critical in the context of national resilience and democratic legitimacy. The fact that sets Singapore apart is that Singapore's incorporation of anti-corruption principles directly into its constitutional culture and also its intuitional discipline which provides a useful comparison for any nation that looks up to them. This nudges for academics to explore the possibility where, by reinterpreting Article 3, 4 and 12(1) of the Sri Lankan Constitution in the light of doctrines such as sovereignty, public trust and equality that the judiciary has already provided the necessary tools in order to reframe state capture as a justifiable constitutional violation without the need for an extra step of immediate legal amendments.

The path forward is thereby twofold: firstly, strategic implementation of litigation under Article 126 and the judicial review process based on constitutional principles which can operationalize the combat against state capture; and secondly, directly target legislative reforms, such as enacting possible anti-capture clauses and mandating lobby transparency which will significantly institutionalize accountability. The component of analysing the Singaporean model, shows that the Singapore's model does not provide a one size for all fit for all answers, but rather it points to a disciplined governance philosophy from which Sri Lanka can learn a procedural and normative lesson to bring substantial change to the current legal framework. Including the lessons drawn from the Singapore's model in a constitutional interpretation and institutional reform setting is critical for restoring the shattered public trust and protecting the democratic government against any future elite capture.

In order to genuinely change Sri Lanka's anti-corruption regime, a strategic shift is required with a solely focus on integrating structural accountability into the core of the state's constitutional, institutional and legal structures. To which, I as a legal student, propose three key areas as possible way forward, from drawing insights from the proven success of the Singaporean model which being grounded in its exceptional constitutional jurisprudence and institutional framework.

Firstly, reframing corruption in Sri Lanka must be viewed in the light and lens as a constitutional violation rather than a mere criminal offense as it is recognized as of now. This reframing is based on Article 3,4 and 12(1) of the Sri Lankan Constitution which would enable the judiciary to view elite driven manipulation of lawmaking, public resources and regulations as a direct infringement to the sovereignty of its people and the ideal of equality before the law. To this the 2023 Supreme Court's decision on the economic crisis which held high ranking members of public office liable under the idea of public trust the foundation, as it establishes a precedent for a constitutional interpretation that extends beyond the common procedural illegality. This doctrinal foundation will create a visible legal pathway for public interest litigation under the provision Article 126 to fundamentally challenge policy distortion and capture induced governmental failure. Thereby, being able to recognize state capture as unlawful allows the courts the ability to serve as a counter-constitutional check on the exclusive overreach and elite power.

Secondly, drawing insight from the Singaporean model, Sri Lanka should pass a thorough State Capture Prevention and Accountability Bill. This said legislation should establish a clear legal definition of what constitutes to state capture, identifying high risk areas such as political finance and regulation monopolies and further require a mandatory

transparency in legislative and budgetary procedures. In place where, state capture is a justifiable offense, the law would provide clarity to courts, civil society and investigators the ability to allow proactive litigation and supervision. This change, would allow the CIABOC and any other intuitions with legal justifications to be able to act on systemic patterns of influence and manipulation rather than being restricted to individual acts of bribery or corruption. The Singaporean model exemplifies how clarity and legislative accuracy significantly allows intuitions to operate with authority, the mandate of public trust and most importantly consistency.

Finally, transparency should be implemented as proactive anti-capture provision. The Right to Information Act, while having significantly developed is underutilized, the same sentiment is seen in the Proceeds of Crime Act 2025. A change such as introduction a platform, something in the lines of ‘A Public Integrity Portal’ could significantly shift the dimension of accountability, wherea consolidated data on procurement data, asset declaration, beneficial ownership of business and ethical audits could all be found on what platform that is readily accessible to the general public. This change is directly drawn from Singapore’s dedication to digital governance openness to be in a place that is open to be scrutinised which minimises prospects of covert lobbying and elite influence. Very realistically, Sri Lanka can replicate this framework not as a clause to mere lower investigative hurdles but to enable civil societies, academics and media to be able to directly scrutinise the public office and hold power to call for collective accountability.

To tie these three pillars together; constitutional reframing, statute codification and transparency enforcement, forms a proven foundation, which is seen from the Singaporean model to effective anti-corruption legal framework. In place of implementing these

reforms, Sri Lanka could transform from a reactive, compliance driven paradigm to a fundamentally rooted, preventive anti-corruption system. All of what is discussed above points to, the fact that these are not abstract goals; they are actionable shifts within the existing Sri Lankan legal framework, and the Singaporean model serves as proof of this concept and the evident precedent in real time.

### **5.3 Future Research**

Possible future research paths as legal student includes having an empirical evaluation of how judicial interpretation of constitutional reframing principles, such as equality, public trust and sovereignty have developed in light of systemic corruption and the economic crisis that shock the nation. Another realistic study would be comparative doctrinal research on how courts in other South Asian countries address constitutional accountability in face of state capture. Another possibility would be to dive into a research on how political finance laws and lobbying rules combat state capture, with emphasis on disclosure of donor impacts.

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