

INTRODUCING CIVIL FORFEITURE AS A FORM OF ANTI-CORRUPTION LAW TO PREVENT THE LOSS OF PUBLIC FUNDS DUE TO THE CORRUPTION OF PUBLIC OFFICERS IN SRI LANKA: LESSONS FROM MALAYSIA AND SINGAPORE.

By

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Abstract

REFORMING THE EXISTING CORRUPTION LAWS FOR CIVIL FORFEITURE OF PUBLIC FUNDS LOST DUE TO CORRUPTION OF PUBLIC OFFICERS IN SRI LANKA: LESSONS FROM MALAYSIA AND SINGAPORE.

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Corruption in countries disturbs the well-being and social standards of their people. Many countries have governments not able to facilitate even the basic needs of their people. With a proud 2500 years of history enriched in self-sufficient and self-sustain socio-economic culture, rulers are seeking financial assistance from other countries even after seven decades of independence. Among many reasons, one of the main is corruption involved with government affairs. Sri Lankan legislature introduced separate laws to govern anti-corruption in 1954 however, it is evident that the effect of existing law is not satisfactory to achieve the social needs.

Restitution in crimes includes punishment for culprits and compensation to the victim. Unlike in other crimes, in corruption punishment, deterrence and compensation have to be given special consideration as the effect of corruption is not individual but communal and the victim is the State. Financial crimes such as corruption are profit motives therefore, it is essential to recover the undue enrichments from the offenders. Sri Lanka does not have an effective mechanism to recover such undue enrichment which belongs to the State. This is also an obligation under the United Nations Convention against Corruption (UNCAC) yet, Sri Lanka failed to comply. Though there are laws enabling the confiscation of such property or assets, the process of confiscation is too complex and time-consuming.

Civil forfeiture is an effective restitution method used by civil law procedure to compensate victims speedily without following complex standards of proof. Hence, this study attempts to find out whether such a mechanism can be used for the anti-corruption framework as an effective recovery process for stolen assets. Accordingly, laws in relation to civil forfeiture, seizures, freezing, and confiscation in similar jurisdictions are analyzed. Malaysia and Singapore can be identified as countries which had the same background of corruption involved in state affairs five decades ago however, they were able to implement effective anti-corruption mechanisms which ultimately support their development in the world economy. The anti-corruption laws in Malaysia and Singapore were examined and critically evaluate with the existing laws of Sri Lanka.

It is found that with the existing criminal justice system in Sri Lanka, a civil forfeiture procedure can be introduced to Sri Lankan anti-corruption laws. Among the many types of corruption, the unexplainable assets of public officials and Politically exposed persons (PEPs) are the best arm to introduce civil forfeiture as persons who bind by law to declare their assets and liabilities yearly having unexplainable assets cannot be justified. Accordingly, it is recommended to reform the Bribery Act No. 11 of 1954 giving prominence to sections 28A, 23A, and incidental provisions.

KEY WORDS: Corruption, Recovery of Stolen Assets, UNCAC, Civil forfeiture, Sri Lankan Law, Malaysian Law, Singapore Law.

Corruption is like a ball of snow, once it's set rolling it must increase

Charles Caleb Colton