

**CORPORATE GOVERNANCE FAILURES AND FRAUD INVESTIGATION: A
COMPARATIVE STUDY OF INDIA'S SERIOUS FRAUD INVESTIGATION OFFICE
AND INTERNATIONAL CORPORATE FRAUD INVESTIGATION AGENCIES**

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Abstract

Corporate fraud in India has repeatedly exposed the weakness of the governance structures meant to prevent it, as the Satyam and IL&FS collapses show. India's institutional answer is the Serious Fraud Investigation Office (SFIO), which has wide investigative and coercive powers under the Companies Act, 2013 but depends on the Central Government for the decision to prosecute. This study asks whether that dependence, rather than any shortage of investigative power, is the SFIO's central institutional weakness.

The study is doctrinal and comparative. It traces the SFIO's origin in the recommendations of the Naresh Chandra Committee, analyses its statutory framework and arrest powers, and compares it with the UK Serious Fraud Office, the US Securities and Exchange Commission and Department of Justice, and Australia's ASIC. It then surveys the Indian case law testing the SFIO's powers and formulates a five-element institutional effectiveness framework covering investigative independence, coercive powers, prosecutorial integration, resource capacity and accountability.

The study finds that the SFIO's powers are broadly comparable to those of its international counterparts, that most litigation concerns the procedure of its actions rather than the substance of its findings, and that its clear weakness lies in prosecutorial integration. It recommends, among other reforms, an independent civil enforcement track for the SFIO modelled on the Australian experience.

Keywords: SFIO; corporate fraud; corporate governance; fraud investigation agencies; prosecutorial integration; comparative law.

CHAPTER

1

INTRODUCTION

1.1 Introduction

Corporate governance failure and corporate fraud are distinct, though closer than the law often admits. Governance failure is a breakdown in systems that hold management accountable: board oversight, internal controls, audit committees and auditor independence. Fraud is deliberate deception for unlawful advantage. What links them is a recurring pattern across major scandals: the frauds happened through governance structures, not despite them. Boards avoided hard questions, auditors signed what was placed before them, and independent directors lent their names without scrutiny.

India offers clear examples. In 2009, Satyam's chairman admitted that its cash balances had been inflated for years, with roughly seven thousand crore rupees in assets nonexistent. Years later, IL&FS, rated AAA almost until default, revealed liabilities above ninety thousand crore rupees across about three hundred and fifty entities. In both, the board, auditors and rating agencies failed to raise the alarm.

India's institutional response is the Serious Fraud Investigation Office (SFIO), a multi-disciplinary agency under the Ministry of Corporate Affairs, statutorily recognised in the Companies Act, 2013. It has examined major corporate collapses, building credibility along with litigation testing its powers.

This study compares the SFIO with the UK's Serious Fraud Office, the US SEC and DOJ, and Australia's ASIC. Each answers a core design question differently: should investigation and prosecution sit in one agency or be divided? The study examines how these choices affect independence, speed and accountability in tackling sophisticated corporate fraud.

1.2 Statement of Problem

The SFIO has wide powers on paper: it can summon witnesses, compel documents, seize records and, since 2017, make arrests. Yet its prosecutorial role still depends on the Central Government's direction on Special Court procedures, a dependence that has repeatedly

produced satellite litigation over the validity of its own actions, as the Adarsh Group investigation shows¹. Unlike the UK Serious Fraud Office, which both investigates and prosecutes, or the US system with its settled SEC-DOJ divide, the SFIO lacks a coherent statutory design for prosecution or for its dealings with the ROC, CBI, ED, SEBI and NFRA. This ambiguity slows India's response to major corporate fraud, which is the problem this study examines. Delay is never neutral: evidence goes stale, assets disappear and investors wait years, as the Satyam and IL&FS cases show.

1.3 Review of Literature

The literature relevant to this study is presented below in broadly chronological order. The purpose of that ordering is to show how thinking about institutional design for fraud investigation has developed over time, from early criminological work on white-collar crime, through the Roskill Report's diagnosis in the 1980s, to the most recent commentary on the SFIO's powers. Twenty principal sources are discussed.

1. Edwin H. Sutherland, *White Collar Crime* (1949).²- Sutherland's work is the natural starting point for any study of corporate wrongdoing. He argued that crimes committed by respectable persons in the course of their occupations were systematically under-investigated and under-punished, largely because the ordinary criminal justice system was built around street crime. That argument, made more than seventy years ago, still explains why specialised agencies were thought necessary in the first place.

2. Donald R. Cressey, *Other People's Money* (1953).³- Cressey's study of embezzlers produced what later came to be called the "fraud triangle" of pressure, opportunity and rationalisation. The model remains the basic vocabulary of forensic accounting, and it is useful here because it locates "opportunity" squarely in weak internal controls, which is to say in governance failure.

3. Fraud Trials Committee, Report ("*The Roskill Report*") (1986).⁴- The Roskill Committee found that pre-1987 English fraud investigation was split across several police forces and prosecuting authorities, and it identified that fragmentation as the main reason fraud trials were slow and often unsuccessful. Its recommendation of a single, unified agency that would both

¹ Serious Fraud Investigation Office v. Rahul Modi & Ors., (2019) 5 SCC 266; Serious Fraud Investigation Office v. Rahul Modi & Ors., Criminal Appeal Nos. 185-186 of 2022 (decided Feb. 7, 2022).

² Edwin H. Sutherland, *White Collar Crime* (Dryden Press, New York, 1949).

³ Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* (Free Press, Glencoe, 1953).

⁴ Fraud Trials Committee, Report ("*The Roskill Report*") (HMSO, London, 1986).

investigate and prosecute was later adopted for the Serious Fraud Office. This study treats that model throughout as the clearest comparative alternative to India's separated structure.

4. Ian Ayres and John Braithwaite, Responsive Regulation (1992).⁵- Ayres and Braithwaite proposed the idea of an "enforcement pyramid", in which regulators begin with persuasion and escalate towards civil and then criminal sanctions as non-compliance continues. The pyramid helps explain why agencies with a full range of civil and criminal tools tend to be more effective than agencies confined to a single, criminal route, an insight that becomes central in Chapter 6.

5. Cadbury Committee, Report of the Committee on the Financial Aspects of Corporate Governance (1992).⁶- The Cadbury Report is usually read as a governance document rather than an enforcement one. Its relevance here lies in its insistence that boards, audit committees and auditors form the first line of defence against fraud, so that external investigation is, in a sense, a measure of how far that first line has failed.

6. Naresh Chandra Committee on Corporate Audit and Governance, Report (2002).⁷- Constituted after a run of stock-market and non-banking finance company scandals, the Committee recommended that India create a specialised, multi-disciplinary fraud investigation body. That recommendation is the direct institutional origin of the SFIO examined in Chapter 2.

7. U.S. Department of Justice, Corporate Fraud Task Force, Annual Reports to the President (2003 onward).⁸- These reports document the creation of the Enron Task Force and the institutionalisation of a dedicated corporate and securities fraud programme within the Department. They supply most of the empirical record relied upon for the American comparative account in Chapter 4.

8. John C. Coffee Jr., Gatekeepers: The Professions and Corporate Governance (2006).⁹- Coffee's account of how auditors, analysts and lawyers failed in the Enron era remains the most persuasive explanation of why private gatekeeping cannot substitute for public enforcement. It informs this study's treatment of auditor liability in the Satyam and IL&FS matters.

⁵ Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, New York, 1992).

⁶ Committee on the Financial Aspects of Corporate Governance, *Report* (Gee & Co., London, 1992).

⁷ Department of Company Affairs, *Report of the Naresh Chandra Committee on Corporate Audit and Governance* (Government of India, New Delhi, 2002).

⁸ U.S. Department of Justice, Corporate Fraud Task Force, *Second Annual Report to the President* (Washington D.C., 2004).

⁹ John C. Coffee Jr., *Gatekeepers: The Professions and Corporate Governance* (Oxford University Press, Oxford, 2006).

9. Jonathan M. Karpoff, D. Scott Lee and Gerald S. Martin, "The Consequences to Managers for Financial Misrepresentation" (2008).¹⁰- Drawing on every SEC and DOJ enforcement action for financial misrepresentation over a long period, this empirical study shows that individual managers face real and often severe penalties once enforcement actually happens. It is drawn upon in Chapter 4 for its account of how the American civil-criminal division of labour operates in practice.

10. Afra Afsharipour, "Corporate Governance Convergence: Lessons from the Indian Experience" (2009).¹¹- Afsharipour argues that India imported Anglo-American governance rules without importing the enforcement institutions that make those rules work. Her argument anticipates, in the governance context, the enforcement gap this study identifies in the context of fraud investigation.

11. Vinod Kothari and others, commentary on the investigation provisions of the Companies Act, 2013 (2013-14).¹²- This body of practitioner commentary examines the newly enacted Sections of the Companies Act, 2013¹³, including the statutory recognition of the SFIO. It provides the doctrinal starting point for the statutory analysis in Chapter 3.

12. Ministry of Corporate Affairs and Insolvency and Bankruptcy Board of India material on inter-agency coordination (2022-23).¹⁴- This material deals with the practical overlap between SFIO investigations and parallel proceedings before the National Company Law Tribunal and the Enforcement Directorate. Chapter 6 returns to this coordination problem.

13. Commentary on the operationalisation of SFIO arrest powers (2017-18).¹⁵- This commentary examines the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017 and the related amendments. These changes brought the SFIO's coercive powers closer to, though still not fully equivalent to, those of the UK SFO, and provide the foundation for the discussion of its investigative and enforcement powers in Chapter 3.

¹⁰ Jonathan M. Karpoff, D. Scott Lee and Gerald S. Martin, "The Consequences to Managers for Financial Misrepresentation", 88 *Journal of Financial Economics* 193 (2008).

¹¹ Afra Afsharipour, "Corporate Governance Convergence: Lessons from the Indian Experience", 29 *Northwestern Journal of International Law and Business* 335 (2009).

¹² Companies Act, 2013 (Act 18 of 2013), ss. 210-229; "Serious Fraud Investigation Office and Its Powers Under Companies Act, 2013", TaxGuru.

¹³ Sections 210 to 229 of the Companies Act, 2013,

¹⁴ Ministry of Corporate Affairs, Government of India, Annual Reports, various years.

¹⁵ The Companies (Amendment) Act, 2017 (Act 1 of 2018); the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

14. Case commentary on Serious Fraud Investigation Office v. Rahul Modi (2019 and 2022).¹⁶- This commentary analyses how the Delhi High Court and the Supreme Court dealt with arrests made in the Adarsh Group Ponzi scheme investigation, both on habeas corpus in 2019 and on default bail in 2022. It forms the doctrinal foundation of the judicial-response chapter.

15. Reportage and analysis of the IL&FS Financial Services chargesheet (2019).¹⁷- This material documents the SFIO's identification of a nine-member "coterie" at the centre of the collapse of IL&FS Financial Services. It supplies the principal case study used throughout this dissertation to test the practical reach of the SFIO's investigative machinery.

Read together, this literature shows broad agreement on one point and persistent disagreement on another. There is wide consensus that specialised, multi-disciplinary agencies are necessary if corporate fraud is to be investigated effectively. There is far less agreement about how the investigative and prosecutorial functions of such an agency should be arranged. The present study sets out to map that disagreement and to evaluate it from an Indian standpoint.

1.4 Research Gap

The existing literature reveals two interrelated research gaps that the present study seeks to address.

1. Existing commentary on the SFIO tends to describe its statutory powers in isolation. It rarely situates those powers within a comparative framework capable of showing which specific institutional features, as opposed to the general adequacy of the agency's legal powers, most directly affect its practical effectiveness.
2. Existing comparative literature on fraud investigation agencies tends to treat the United Kingdom, the United States and Australia as separate case studies. It seldom uses them as a structured basis for evaluating a fourth system, India's, against a common set of institutional design criteria.

The study is delimited in the following ways. It is confined to corporate fraud investigation and does not examine the parallel, though institutionally distinct, machinery for investigating money laundering under the Prevention of Money Laundering Act, 2002, except where an SFIO investigation has led to connected Enforcement Directorate proceedings. Its comparative analysis is restricted to the United Kingdom, the United States and Australia as representative common-

¹⁶ "Case Brief: SFIO v. Rahul Modi".

¹⁷ "IL&FS Case: SFIO Recommends Action Against Auditors, Action for Recovery of Losses", The Week, June 4, 2019.

law comparators, rather than a wider international survey. Finally, its treatment of very recent developments, including the replacement of the Code of Criminal Procedure, 1973 by the Bharatiya Nagarik Suraksha Sanhita, 2023, is necessarily provisional, given the pace of legislative and institutional change in this field.

1.5 Scope of the Study

The study aims to be useful in three ways. For policy-makers, it suggests that the SFIO's most pressing need is not more coercive powers or resources but a better-designed route from investigation to outcome, which is a narrower and more achievable reform agenda. For courts and practitioners, it gathers the case law on the SFIO's powers, scattered across bail orders, writ petitions and appellate judgments, into one place, so that patterns emerge and legitimate procedural objections can be told apart from tactical litigation more easily. For students and researchers, it offers a comparative framework that can be applied to other agencies and jurisdictions, and it takes a modest step toward filling a gap in Indian scholarship, which has paid far more attention to the rules of corporate law than to the institutions that enforce them.

1.6 Research Questions

1. What is the origin and historical development of specialised corporate fraud investigation in India, and what institutional gap was the SFIO created to fill?
2. What statutory framework governs the SFIO's investigative and coercive powers under the Companies Act, 2013, and what do the reported cases reveal about how that framework works in practice?
3. How do the United Kingdom, the United States and Australia structure the relationship between fraud investigation and prosecution, and what lessons does that comparison offer India?
4. What patterns emerge from the wider body of Indian case law testing the SFIO's powers and procedures?
5. Can an institutional effectiveness framework be formulated and applied to assess the SFIO against its international counterparts?

1.7 Research Objectives

1. To trace the SFIO's origin in a 2003 executive resolution, which responded to the Naresh Chandra Committee's finding that no Indian agency had the multi-disciplinary expertise

needed to investigate sophisticated corporate fraud, and to explain why statutory recognition followed only a decade later.

2. To analyse the statutory framework governing corporate fraud investigations and arrest powers, together with the relevant 2017 rules and subsequent amendments, as a detailed but procedurally demanding mechanism whose validity has been repeatedly examined and, in some instances, questioned by courts in reported litigation.
3. To examine the United Kingdom's combined, investigate-and-prosecute model, the United States separated civil-criminal model and Australia's regulator-led model as three coherent, if different, answers to the design question this study investigates.
4. To identify the recurring pattern in Indian case law of procedural challenges to the way the SFIO exercises its powers, as distinct from challenges to the substance of its fraud findings.
5. To formulate and apply an institutional effectiveness framework, built around independence, coercive powers, prosecutorial integration, resource capacity and accountability, so as to identify specific and addressable gaps in the SFIO's institutional design.

1.8 Hypothesis

The SFIO's key weakness lies not in its investigative powers but in its poor integration with prosecution. Aligning with the UK's combined model or a clearly defined US-style division of labour would speed up and finalise India's response to major corporate fraud.

1.9 Research Methodology

This study is doctrinal and comparative. It draws on the Companies Act, 2013¹⁸, the related rules, and the statutes and literature of the United Kingdom, the United States and Australia. The comparison is functional: it asks what each institution is meant to do in detecting, investigating and prosecuting serious corporate fraud, and how each system organises itself for that task. No empirical methods are used, and any figures come from published sources.

1.10 Scheme of the Study

To address the research questions and objectives set out above, the study is organised into seven chapters.

¹⁸ Sections 210 to 229 and 435 to 447 of the Companies Act, 2013

Chapter 1: Introduction

This chapter introduces the subject, states the problem and reviews the literature. It also sets out the research questions, objectives, hypothesis, methodology, research gap and delimitation that guide the study.

Chapter 2: Conceptual Analysis of Corporate Fraud Investigation

This chapter explains what is meant by corporate fraud and why it calls for specialised investigation. It then traces the origin, historical development and institutional background of specialised fraud investigation, following the SFIO from the Naresh Chandra Committee's recommendations to its present statutory form.

Chapter 3: Legal Perspectives on the SFIO's Statutory Framework

This chapter examines the statutory framework that governs the SFIO under the Companies Act, 2013, the foundational case law testing that framework, and the wider institutional material that bears on its operation.

Chapter 4: International Perspectives on Fraud Investigation Agencies

This chapter examines the institutional design of the United Kingdom's Serious Fraud Office, the United States' Securities and Exchange Commission and Department of Justice, and the Australian Securities and Investments Commission, with a view to drawing design lessons for India.

Chapter 5: Judicial Response to the SFIO's Powers

This chapter surveys judicial reasoning across the wider body of case law on the SFIO's investigative and coercive powers, in order to identify recurring patterns in the way courts have policed the boundaries of those powers.

Chapter 6: Towards an Institutional Effectiveness Framework

This chapter forms the original contribution of the study. It formulates an institutional effectiveness framework and applies it comparatively to the SFIO and its three international counterparts, in order to identify specific and addressable gaps in India's institutional design.

Chapter 7: Conclusion, Suggestions and Recommendations

The concluding chapter summarises the findings of the study, tests the hypothesis set out in Section 1.6, and offers suggestions and recommendations for strengthening India's institutional framework for corporate fraud investigation.

CHAPTER**2****CONCEPTUAL STUDY OF CORPORATE FRAUD INVESTIGATION**

This chapter takes a conceptual and historical look at specialised corporate fraud investigation. It begins with the meaning of corporate fraud itself, because an agency's design depends heavily on what it is expected to detect. It then traces where the idea of a specialised fraud agency came from, how India's own agency developed against that background, and the immediate circumstances that shaped its present statutory form. The chapter ends by connecting these threads back to the theme of governance failure with which the study began.

2.1 Meaning and Nature of Corporate Fraud**2.1.1 Meaning of Corporate Fraud**

Indian company law did not define fraud comprehensively until 2013. Earlier legislation penalised fraudulent conduct in particular contexts, such as fraudulent conduct of business or misstatement in prospectuses, but it offered no single, general statutory definition. The Companies Act, 2013 closed this gap. The Explanation provides that “fraud”, in relation to the affairs of a company or a body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person, or any other person with his connivance, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company, its shareholders, its creditors or any other person, whether or not there is any wrongful gain or wrongful loss.¹⁹ The same Explanation separately defines “wrongful gain” and “wrongful loss”, which ties the concept to unlawful enrichment and unlawful deprivation of property.

2.1.2 Nature of Corporate Fraud

Three features of this definition deserve attention. First, it is broad enough to reach omissions and concealment, not only positive acts of deception. A director who deliberately withholds a material fact, or an officer who exploits his position to the company's detriment, can therefore be brought within its scope. Second, it does not require proof of actual gain or loss. The intent to deceive or to gain an undue advantage is enough, so an attempted fraud that fails to produce any result may still be punishable. Third, it extends liability beyond the principal actor to any person who connives, which captures facilitators such as professionals, intermediaries and nominee directors.

¹⁹ Companies Act, 2013 (Act 18 of 2013), s. 447, Explanation (i)–(iii).

The punishment is correspondingly severe. A person guilty of fraud faces imprisonment of not less than six months, extending up to ten years, together with a fine of at least the amount involved and up to three times that amount. Where the fraud involves the public interest, the minimum term of imprisonment rises to three years.²⁰ Later amendments introduced a monetary threshold, so that frauds below a specified amount which do not involve the public interest may be punished less severely and compounded. The law also strengthens enforcement around the offence, offences are cognizable and subject to stringent bail conditions, and Auditors are required to report suspected fraud, while fraud remains one of the most serious offences under company law and forms the foundation of many investigations conducted by the Serious Fraud Investigation Office (SFIO).

In practice, corporate fraud takes a fairly limited number of recurring forms, though their execution can be extremely complex. The first is financial statement fraud: the manipulation of revenue, assets or cash balances to present a misleadingly healthy picture of the company, as at Satyam. The second is the siphoning or diversion of funds, typically through layers of related parties, shell entities or circular transactions, which was a central feature of the IL&FS findings and of the Bhushan Steel case. The third is misappropriation of assets by insiders, where those entrusted with the company's property treat it as their own. The fourth involves frauds on investors, including Ponzi-type deposit schemes of the kind alleged against the Adarsh Group, in which early investors are paid out of later investors' money. What these forms share is that each depends on concealment inside the company's own books. That is why forensic accounting, rather than ordinary police work, sits at the heart of a fraud investigation: the evidence lies in ledgers, bank trails and related-party records, and it must be reconstructed before any wrongdoing can be proved.

Cressey's "fraud triangle" offers a useful way of thinking about why such frauds occur.²¹ It suggests that fraud requires pressure (for example, a need to meet market expectations or service debt), opportunity (weak controls or a captured board) and rationalisation (the belief that the deception is temporary or harmless). Of these, opportunity is the element most directly within the reach of law and institutional design. Pressure is rooted in market conditions and personal circumstances, and rationalisation is a matter of individual psychology, but opportunity can be

²⁰ Companies Act, 2013 (Act 18 of 2013), s. 447, provisos.

²¹ Donald R. Cressey, *Other People's Money: A Study in the Social Psychology of Embezzlement* (Free Press, Glencoe, 1953).

reduced through independent directors, effective audit committees, internal financial controls and whistleblower mechanisms. Good governance narrows the opportunity. A credible investigation agency raises the expected cost of exploiting it. The two are therefore complements rather than substitutes, and a failure in one tends to place a heavier burden on the other.

2.2 Origin

2.2.1 The Problem: Fragmented Investigation

The idea that corporate fraud needs a specialised investigative response, distinct from ordinary criminal policing, is fairly recent. For most of the twentieth century, allegations of corporate dishonesty were investigated, if they were investigated at all, by general police forces or by company-law registrars. Neither had the accounting expertise or investigative resources that sophisticated financial fraud demands. The mismatch between the complexity of modern corporate fraud and the capacity available to investigate it only became impossible to ignore when a series of large and very public corporate collapses showed what that mismatch cost in practice.

The clearest and most influential statement of the problem came from England. During the 1970s and early 1980s a number of City of London fraud trials collapsed or ended in acquittal after years of delay. Public confidence in the existing system, which was divided between several police forces, the Department of Trade and Industry and a range of prosecuting authorities, fell sharply.

2.2.2 The Roskill Model and Its Influence

The Government responded in 1983 by appointing the Fraud Trials Committee under Lord Roskill. Its 1986 report identified fragmentation as the central cause of the problem and recommended the creation of a single unified organisation that would bring investigators, lawyers and forensic accountants together under one roof. That organisational structure came to be known as the Roskill model.²²

The Roskill Committee's language was unusually blunt for an official report. It observed that the public no longer believed the legal system in England and Wales was capable of bringing the perpetrators of serious frauds expeditiously and effectively to book. That sense of a credibility crisis, more than any abstract theory of institutional design, drove the reforms that followed.

²² Fraud Trials Committee, Report ("The Roskill Report") (HMSO, London, 1986).

This is the conceptual origin from which every specialised fraud agency examined in this study, India's included, ultimately draws. Some borrowed the model directly. Others arrived at the same place independently, having recognised the same basic problem: a fraud investigation requires legal, forensic-accounting, banking and investigative skills to be applied at the same time, no general-purpose agency has traditionally possessed all of them, and failing to combine them inside one body produces investigations that are too slow and prosecutions that are too fragile to hold sophisticated wrongdoers to account.

2.3 Historical Development

2.3.1 The English Experience

The Roskill Report's recommendations were given effect in England by the Criminal Justice Act, 1987. The Act established the Serious Fraud Office, which opened for business in April 1988 and, for the first time in English legal history, combined the power to investigate and the power to prosecute in a single specialist agency.²³ The SFO's early years were not easy. High-profile cases such as the Guinness share-trading prosecutions and the Maxwell pension fund litigation produced mixed results, and the office was criticised more than once for taking on cases it could not win. Those difficulties are worth keeping in mind, because they show that the Roskill model was never a guarantee of success. What it offered was a structure in which success was at least institutionally possible.

2.3.2 The Indian Experience Before 2003

India's own history followed a different and considerably slower path. Before the early 2000s, corporate fraud in India was investigated under the general inspection and investigation provisions of the Companies Act, 1956. These provisions were administered by the Department of Company Affairs and the Registrars of Companies, who, like their English counterparts before 1987, had no dedicated forensic-accounting or financial-investigation capacity. Inspectors were appointed case by case, often from outside the government, and had to build an investigative team from scratch each time.

The weaknesses of this arrangement were exposed by a sequence of scandals. The securities scam of 1992, associated with Harshad Mehta, revealed how bank funds could be diverted into the stock market through the misuse of ready-forward transactions and bank receipts. The CRB

²³ Criminal Justice Act 1987 (UK), ss. 1-2; "Serious Fraud Office (United Kingdom)".

Capital Markets collapse of 1997 and the wave of so-called "vanishing companies", which raised money from the public in the mid-1990s and then simply disappeared, showed how easily small investors could be defrauded. The Ketan Parekh episode of 2001, which brought down a co-operative bank and triggered a second Joint Parliamentary Committee inquiry, confirmed that the earlier lessons had not been absorbed.²⁴ Each of these episodes was investigated by a different mix of agencies, and each produced long-running prosecutions with uncertain results.

2.3.3 The Naresh Chandra Committee and the Creation of the SFIO

Against this background, the Government constituted the Naresh Chandra Committee on Corporate Audit and Governance in August 2002. The Committee's mandate was primarily about auditor independence and the role of independent directors, shaped in part by the collapse of Enron and Arthur Andersen in the United States the year before. But it also recommended the creation of a dedicated, multi-disciplinary fraud investigation body, an Indian equivalent of the British SFO, to deal with serious corporate frauds.²⁵

The Vajpayee Government accepted the recommendation. The Union Cabinet approved the setting up of the Serious Fraud Investigation Office on 9 January 2003, and the office was constituted by a government resolution of 2 July 2003.²⁶ Unlike the English SFO, which was created by statute from the outset, the new Indian office had no independent statutory basis. It derived its investigative authority from the inspection provisions of the 1956 Act, under which its officers were appointed as inspectors in individual cases. In practice this meant that the SFIO had the expertise of a specialist agency but the legal powers of an ad hoc inspector.

The contrast between the two jurisdictions is instructive. In England, Parliament settled the agency's powers and its relationship to prosecution in a single statute before the office opened its doors. In India, the executive created the agency first and left the legislature to work out its powers roughly a decade later, and even then the relationship between investigation and prosecution was not thought through as a single design question. This study argues that the order in which things were done has left a lasting mark on India's institutional design.

²⁴ Joint Parliamentary Committee on Stock Market Scam and Matters Relating Thereto, Report (Lok Sabha Secretariat, New Delhi, 2002).

²⁵ Department of Company Affairs, Report of the Naresh Chandra Committee on Corporate Audit and Governance (Government of India, New Delhi, 2002).

²⁶ "Serious Fraud Investigation Office".

2.4 Background

The immediate background to the SFIO's statutory recognition was the long process of drafting a new company law. The J.J. Irani Expert Committee on Company Law reported in 2005 and recommended, among other things, that the SFIO be given statutory backing.²⁷ Successive Companies Bills followed in 2008, 2009 and 2011, the last of which was examined in detail by the Parliamentary Standing Committee on Finance.²⁸ The process culminated in the Companies Act, 2013, which replaced the 1956 Act in its entirety and, for the first time, gave the SFIO express statutory status. The Act also provided for continuity, so that the existing office would carry on until the new office was formally constituted.²⁹

The drafters of the 2013 Act were working in the shadow of the Satyam fraud. When the company's founder confessed in January 2009 to fabricating its accounts over several years, the SFIO became a name recognised well beyond the specialist corporate-law community. The episode supplied much of the political impetus for the more elaborate investigation provisions of the 2013 Act, and for related reforms such as the statutory duty on auditors to report suspected fraud to the Central Government, and the provision for a National Financial Reporting Authority. Even after the 2013 Act came into force, however, the SFIO's coercive powers were limited when measured against comparative standards. The Act contained a power of arrest, but its effective use depended on rules that were notified only in August 2017, alongside the amendments introduced by the Companies (Amendment) Act, 2017. From that point SFIO officers could arrest a person whom they had reason to believe, on the basis of material in their possession, to be guilty of an offence punishable under the fraud provisions of the Act, subject to the safeguards examined in Chapter 3.³⁰ The first high-profile use of the power came in August 2018, with the arrest of the former promoter of Bhushan Steel.

²⁷ Ministry of Company Affairs, Report of the Expert Committee on Company Law (J.J. Irani Committee) (Government of India, New Delhi, 2005).

²⁸ Standing Committee on Finance (2011-12), Fifty-Seventh Report on the Companies Bill, 2011 (Lok Sabha Secretariat, New Delhi, 2012).

²⁹ Companies Act, 2013 (Act 18 of 2013), s. 211; "Serious Fraud Investigation Office (SFIO) in India", Lexology.

³⁰ The Companies (Amendment) Act, 2017 (Act 1 of 2018); the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

2.5 A Typology of Fraud Investigation Agencies

Before turning back to governance, it is useful to set out a simple typology of the ways in which states have organised fraud investigation, because the rest of this study relies on it. Broadly, four models can be identified.

The first is the general police model, in which corporate fraud is treated like any other crime and investigated by ordinary police forces, perhaps with a specialised economic offences wing, and prosecuted by a general public prosecution service. This was the position in England before 1987 and, in large part, in India before 2003. Its weakness, as the Roskill Committee found, is that ordinary police investigators rarely have the accounting and financial skills that complex fraud cases require, and the separation between investigator and prosecutor makes it difficult to build a case with the eventual trial in mind.

The second is the unified agency model, represented by the UK Serious Fraud Office, in which a single specialist body both investigates and prosecutes. Its strength is integration: lawyers, accountants and investigators work together from the start. Its weakness is that it concentrates a great deal of responsibility in one body, so that institutional failures, such as the disclosure problems that have troubled the SFO in recent years, can affect every stage of a case at once.

The third is the coordinated multi-agency model, represented by the United States, in which separate agencies with distinct civil and criminal mandates work on the same conduct under formal and informal coordination arrangements. Its strength is flexibility and depth of resources. Its weakness is complexity, and it depends heavily on a culture of cooperation between agencies that may take decades to develop.

The fourth is the regulator-led model, represented by Australia, in which a financial or corporate regulator investigates, pursues civil remedies itself and refers criminal matters to an independent prosecutor. Its strength is that the regulator always has some enforcement route available, even if a criminal prosecution does not proceed. Its weakness is that the regulator may come to prefer civil or negotiated outcomes even where criminal prosecution is warranted, the criticism made by the Hayne Royal Commission.

India's SFIO does not fit neatly into any one of these categories. It is a specialist investigative agency, like the SFO, but it does not decide on or control prosecution. It works alongside other agencies, as in the American model, but without a standing coordination structure. And it refers cases for prosecution, as ASIC does, but without a civil track of its own. Much of the analysis in

the chapters that follow is, in effect, an attempt to work out which of these features matter most, and what follows from the SFIO's hybrid position.

2.6 Governance Failure as the Precondition of Fraud

It is worth pausing at this point to connect the history traced above with the governance theme introduced in Chapter 1. In each of the major Indian frauds discussed in this study, the formal machinery of corporate governance was present. Satyam had a board with distinguished independent directors and was audited by an affiliate of a Big Four network. IL&FS had a board that included nominees of large institutional shareholders and was audited by well-known firms. The Adarsh Group's entities were registered companies and limited liability partnerships, subject to the ordinary filing obligations of company law.

What failed in each case was not the existence of governance structures but their independence and seriousness. The SFIO's IL&FS findings described a small group of senior managers running the company, in the agency's words, "as a personal fiefdom", with the board and the auditors failing to challenge them. This is why the investigation of corporate fraud cannot be separated from the study of corporate governance. A specialised fraud agency is, in a real sense, the last line of defence: it is called in precisely when the first and second lines, the board and the auditor, have already been breached.

The background traced in this chapter is therefore essential to understanding both the SFIO's genuine strengths and the specific gaps this study identifies in the chapters that follow. The agency rests on a real and internationally recognised insight. But it was assembled gradually and somewhat reactively, in response to successive scandals rather than through one comprehensive design exercise. The Satyam and IL&FS investigations, examined throughout this study, tested an agency whose statutory powers were still being assembled even as it confronted some of the most complex corporate frauds in Indian economic history.

CHAPTER

3

LEGAL PERSPECTIVES ON THE SFIO'S STATUTORY FRAMEWORK

This chapter moves from concept to positive law. It examines, first, the statutory provisions that establish and empower the SFIO; second, the foundational case law testing that framework; and third, the wider body of rules and institutional material that shapes how the agency actually

works. The aim is to set out, as clearly as possible, what the SFIO can and cannot do under Indian law today, before Chapter 4 compares that position with practice abroad.

3.1 Statutory Framework

The SFIO's powers are found mainly in Chapter XIV of the Companies Act, 2013, which deals with inspection, inquiry and investigation³¹, read with the provisions on Special Courts in Chapter XXVIII³² and the penal provisions in Chapter XXIX. It helps to see these provisions as a sequence. A matter usually begins with an inspection or inquiry by the Registrar of Companies, may be escalated to an investigation by inspectors appointed by the Central Government, and, in serious cases, is handed to the SFIO. The SFIO's report may then become the foundation of a prosecution before a Special Court.

3.1.1 Establishment of the SFIO

The Central Government to establish, by notification, an office called the Serious Fraud Investigation Office to investigate frauds relating to companies. The office is headed by a director, who must be an officer not below the rank of Joint Secretary to the Government of India with knowledge and experience in dealing with matters relating to corporate affairs. It is staffed by experts drawn from banking, corporate affairs, taxation, forensic audit, capital markets, information technology, law and other fields the Central Government may prescribe.³³

The multi-disciplinary staffing requirement is a direct statutory expression of the Roskill model described in Chapter 2. It recognises expressly that a fraud investigation needs legal, financial and technical expertise working together, rather than treating fraud as an ordinary criminal matter to be handled by generalist police officers alone. The SFIO, originally established through a government resolution in 2003, continued its existence under the new Companies Act. It is headquartered in New Delhi, with regional offices in Mumbai, Kolkata, Chennai and Hyderabad. Its workforce comprises officers deputed from various government departments and professionals recruited for their specialised expertise.

3.1.2 Investigation into the Affairs of a Company by the SFIO

The Central Government may assign an investigation into a company's affairs to the Serious Fraud Investigation Office (SFIO) when it considers such an investigation necessary. This may

³¹ Sections 206 to 229, Companies Act, 2013

³² Sections 435 to 446, Companies Act, 2013

³³ Companies Act, 2013 (Act 18 of 2013), s. 211(1)-(3).

arise from a report submitted by the Registrar or an investigating officer, or from a special resolution passed by the company requesting an investigation into its affairs; the public interest; and a request from any department of the Central Government or of a State Government.³⁴

Once a case has been assigned to the SFIO, No other investigating agency, whether under the Central Government or any State Government, may continue investigating offences under the Act once the designated authority has taken up the case for investigation. Any agency that has already started such an investigation must hand over the relevant documents and records to the SFIO.³⁵ The purpose is to prevent duplicate parallel investigations into the same conduct, a problem that had plagued earlier scandals. It is worth noticing, however, that the bar is limited to offences under the Companies Act. Investigations under the Indian Penal Code (now the Bharatiya Nyaya Sanhita, 2023), the Prevention of Money Laundering Act or the Prevention of Corruption Act may continue in parallel, which partly explains the multi-agency picture described in Chapter 5.

The remaining provisions outline the procedures for conducting the investigation and the subsequent handling of its findings. The Director nominates the investigating officers, who exercise the powers of an inspector, including the power to examine persons on oath and to require the production of books and papers.³⁶ The company and its officers and employees are under a duty to provide all information and assistance the investigating officer may need. The Central Government may ask for an interim report, and on completion the SFIO must submit its investigation report to the Government.

The key provisions relevant to this study empower the Central Government, upon receiving and examining the SFIO's investigation report and obtaining legal advice where necessary, to direct the initiation of prosecution against the company, its officers, employees, or any other person directly or indirectly connected with its affairs. Furthermore, the investigation report submitted to the Special Court for framing charges is treated as equivalent to a police report filed upon completion of an investigation under the Code of Criminal Procedure.³⁷ The provision establishes a two-way channel of information exchange, requiring the SFIO to share relevant information and documents with other investigating agencies while also enabling it to receive information and documents from them.

³⁴ Companies Act, 2013 (Act 18 of 2013), s. 212(1).

³⁵ "Section 212. Investigation into Affairs of Company by Serious Fraud Investigation Office", CAIRR.

³⁶ Companies Act, 2013 (Act 18 of 2013), ss. 212(4)-(5), 217.

³⁷ Companies Act, 2013 (Act 18 of 2013), s. 212(14)-(15).

The structure deserves emphasis because it sits at the centre of this study's argument. The SFIO investigates. But the decision whether to prosecute is not the SFIO's own decision. It falls under the authority of the Central Government, which oversees the decision to initiate prosecution, while the prosecution itself is conducted before a Special Court by public prosecutors appointed for that purpose. Between the end of the investigation and the start of the trial, in other words, there is a handoff that is mediated by the executive.

3.1.3 Arrest and Bail

Certain offences under the Companies Act, including serious cases of fraud, are classified as cognizable offences and are subject to stringent bail conditions. A person accused of such an offence may not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application and, where the Prosecutor does oppose it, the court is satisfied that there are reasonable grounds for believing the accused is not guilty of the offence and is not likely to commit any offence while on bail.³⁸ Exceptions are made for persons under sixteen years of age, women, and the sick or infirm, and, following the 2017 amendment, for persons accused of fraud involving amounts below a specified threshold.

The law empowers authorised senior officers of the SFIO, acting with the approval of the Central Government, to arrest a person when they have reasonable grounds, based on the material in their possession, to believe that the person has committed an offence punishable under the relevant legal provisions. The reasons for such belief must be recorded in writing, and the arrested person must be informed of the grounds of arrest as soon as possible. The arresting officer is also required to forward a copy of the arrest order, along with the supporting material, to the SFIO in a sealed envelope. Furthermore, the arrested person must be produced before a Judicial Magistrate or Metropolitan Magistrate within twenty-four hours of the arrest.³⁹ The 2017 Arrest Rules add further procedural detail, including requirements as to the arrest memo, the information of a relative or friend, and the prior written approval of the Director in certain cases. These safeguards are considerably more elaborate than the constraints on ordinary arrest under criminal procedure. That reflects a legislative judgment that a power to arrest in the specific context of a corporate fraud investigation, often exercised against people with substantial resources and legal sophistication, needs correspondingly rigorous internal checks. As Chapter 5

³⁸ Companies Act, 2013 (Act 18 of 2013), s. 212(6), as amended by the Companies (Amendment) Act, 2017.

³⁹ Companies Act, 2013 (Act 18 of 2013), s. 212(8)-(10); the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017.

shows, the same safeguards have also become the main battleground in litigation over the SFIO's powers.

3.1.4 The Public-Interest Route

A separate route to an SFIO investigation arises through the legal framework governing oppression and mismanagement. When a company's affairs are conducted in a manner prejudicial to the public interest, the Central Government may approach the National Company Law Tribunal (NCLT) for appropriate orders. The Tribunal possesses broad remedial powers to address such misconduct, and the relevant provisions empower the government to seek intervention where corporate affairs raise serious concerns about public interest and governance, allow the Government to seek, among other things, the removal of directors and orders in aid of investigation.⁴⁰

This was the approach adopted in the IL&FS case. In early October 2018, the Government approached the NCLT to remove the existing IL&FS board and appoint a new board led by banker Uday Kotak. Within days, the Ministry of Corporate Affairs ordered an SFIO investigation into the affairs of IL&FS and its subsidiaries, following the group's default on debt of more than ninety thousand crore rupees.⁴¹ The combination of Tribunal-supervised management change and SFIO investigation is a distinctive feature of the Indian system. It allowed the Government to stabilise a systemically important group and investigate its past management at the same time.

3.1.5 Related Provisions

Several other provisions strengthen the corporate investigation framework. The Registrar is empowered to obtain information and conduct inspections, while findings from these inspections may be reported to the Central Government for consideration of further investigation. The Central Government can independently order investigations through appointed inspectors, and the National Company Law Tribunal may also direct an investigation upon an application by members or where sufficient grounds exist. The law further provides for the investigation of related companies, the seizure of relevant documents and the freezing of assets to prevent their misuse or dissipation. Additionally, it imposes penalties for making false statements and

⁴⁰ Companies Act, 2013 (Act 18 of 2013), ss. 241(2), 242.

⁴¹ Companies Act, 2013 (Act 18 of 2013), s. 241(2); "Govt Orders SFIO Investigation into IL&FS and its Subsidiaries", Business Today.

providing false evidence, while establishing Special Courts to ensure the effective and timely prosecution of offences under company law.⁴²

Finally, statutory auditors are required to report any suspected fraud that comes to their attention during the course of their professional duties to the appropriate authorities, has reason to believe that an offence of fraud is being or has been committed against the company by its officers or employees to report the matter to the Central Government where the amount involved crosses a prescribed threshold. This provision, introduced after Satyam, is in principle an important source of referrals to the SFIO, although its effectiveness depends on auditors actually using it.

3.2 Judicial justification

3.2.1 Judicial Scrutiny of SFIO's Powers

The best-known reported litigation on the SFIO's powers arose from its investigation into the Adarsh Group, a set of companies and limited liability partnerships alleged to have run a Ponzi-type scheme through a credit co-operative society, diverting large sums deposited by investors. The Central Government ordered an investigation into the matter under the relevant provisions of the Companies Act and the Limited Liability Partnership Act, 2008, and fixed an initial period within which it was to be completed. In December 2018 SFIO officers arrested Rahul Modi, Mukesh Modi and others.⁴³

The accused approached the Delhi High Court by way of habeas corpus. They argued that the period fixed for the investigation had already expired when the arrests were made, that no extension had been granted at that point, and that the SFIO therefore had no authority to arrest anyone. The High Court accepted the argument and ordered their release, treating the later extension of the investigation period as incapable of validating arrests already made.⁴⁴

On appeal, a bench of the Supreme Court comprising U.U. Lalit and A.M. Sapre JJ. set aside the High Court's order in March 2019. The Court's central holding was procedural but important: once the accused had been remanded to custody by a competent court through a judicial order, the legality of that custody could not be challenged by a writ of habeas corpus. The proper remedy lay in the ordinary procedures for challenging remand and seeking bail.⁴⁵

⁴² Companies Act, 2013 (Act 18 of 2013), ss. 206-210, 213, 219-221, 435-436, 448-449.

⁴³ Serious Fraud Investigation Office v. Rahul Modi & Ors., (2019) 5 SCC 266.

⁴⁴ Rahul Modi v. Union of India & Ors., W.P.(Crl.) 3842/2018 (Delhi High Court, order dated Dec. 20, 2018).

⁴⁵ Serious Fraud Investigation Office v. Rahul Modi & Ors., (2019) 5 SCC 266.

The litigation returned to the Supreme Court in 2022 on a different question. The accused had been granted default bail by the High Court on the ground that the Special Court had not taken cognizance of the SFIO's complaint within the statutory period, even though the complaint itself had been filed in time. A bench of L. Nageswara Rao and B.R. Gavai JJ. allowed the SFIO's appeals on 7 February 2022. It held that the indefeasible right to default bail Procedure arises only if no charge-sheet or complaint is filed within the prescribed period; whether or not the court has taken cognizance is irrelevant to that right.⁴⁶

The Adarsh litigation matters for this study for two reasons. It shows the safeguards around SFIO arrests doing exactly what they were meant to do, prompting genuine and searching judicial scrutiny of the agency's compliance with its own procedure. And it shows that, at the level of the Supreme Court, that scrutiny has ultimately tended to vindicate the agency's authority to act rather than to undermine it.

3.2.2 Constitutional Challenges to SFIO's Arrest Powers

The first major test of the arrest power came a few months earlier. On 8 August 2018 the SFIO arrested Neeraj Singal, the former promoter of Bhushan Steel, Under the relevant arrest provisions, the SFIO arrested Neeraj Singal, the former promoter of Bhushan Steel, alleging his involvement in the diversion of thousands of crores of rupees in borrowed funds. On 29 August 2018, the Delhi High Court granted him interim bail. In doing so, the Court went beyond the ordinary scope of bail proceedings by questioning the constitutional validity of the stringent bail conditions, drawing on the Supreme Court's decision in Nimesh Tarachand Shah v. Union of India, which had struck down a similar provision under the Prevention of Money Laundering Act.⁴⁷ It also questioned whether the use of an accused's signed statement as evidence was compatible with the protection against self-incrimination in Article 20(3).

On 4 September 2018 a Supreme Court bench of D.Y. Chandrachud and A.M. Khanwilkar JJ. left the grant of bail undisturbed but stayed the High Court's wider observations and transferred the constitutional questions to itself. The Court remarked that a bail court should have confined itself to the ordinary bail jurisdiction rather than pronouncing on the validity of the statute, and that observations of that kind could have far-reaching consequences for other investigations

⁴⁶ Serious Fraud Investigation Office v. Rahul Modi & Ors., Criminal Appeal Nos. 185-186 of 2022 (decided Feb. 7, 2022).

⁴⁷ "SC Upholds Delhi HC Order Granting Bail to Neeraj Singal, Stays Other Parts of the Order", LiveLaw, Sept. 4, 2018.

under the Companies Act. The episode shows how quickly a challenge to a single arrest can turn into a challenge to the architecture of the SFIO's powers as a whole.

3.3 Other Applicable Materials

Beyond the statute and the case law, the SFIO's operation is shaped by a body of subordinate legislation and institutional material. The Companies (Inspection, Investigation and Inquiry) Rules, 2014 govern matters such as the conditions of service of the Director and other officers, the manner of seizure and retention of documents, and the procedure for investigations.⁴⁸ The 2017 Arrest Rules, already discussed, regulate the most sensitive of the SFIO's powers. The Ministry of Corporate Affairs' annual reports record the number of investigations assigned to and completed by the SFIO and the number of prosecutions launched, although, as Chapter 6 notes, they do not provide the kind of detailed outcome data that would permit rigorous comparison.

Two further institutional developments deserve mention. The first is the National Financial Reporting Authority, constituted in 2018, which now oversees the quality of audits of listed and other large companies and can discipline auditors. In *Deloitte Haskins & Sells LLP v. Union of India* the Supreme Court upheld the validity⁴⁹, which allows the NCLT to direct a change of auditor where the auditor has acted fraudulently, in proceedings that arose from IL&FS.⁵⁰ The second is the replacement, with effect from 1 July 2024, of the Code of Criminal Procedure by the Bharatiya Nagarik Suraksha Sanhita, 2023. References in the Companies Act to provisions of the old Code must now be read with the corresponding provisions of the new one, and it remains to be seen how far the new procedural code will alter the practice of SFIO prosecutions.

3.4 The SFIO Investigation Process in Practice

It may help, before moving on, to describe in plain terms how an SFIO investigation typically unfolds, since the statutory provisions are scattered and their sequence is not always obvious.

The process usually begins outside the SFIO. A Registrar of Companies may identify irregularities during an inspection and report them to the Ministry of Corporate Affairs. An auditor may raise concerns about suspected fraud, while sectoral regulators such as the Reserve Bank of India or SEBI may refer cases for further investigation. Similarly, a State Government may seek assistance following the collapse of a deposit-taking scheme. In some instances, such

⁴⁸ Companies (Inspection, Investigation and Inquiry) Rules, 2014; Ministry of Corporate Affairs, Government of India, Annual Reports.

⁴⁹ Section 140(5), the companies act, 2013

⁵⁰ *Deloitte Haskins & Sells LLP v. Union of India* (Supreme Court of India, 2023).

as Satyam and IL&FS, a major corporate crisis attracts immediate government intervention. In each case, the Ministry of Corporate Affairs examines the available evidence and decides whether to entrust the investigation to the SFIO, generally specifying a timeframe for its completion.

Once the case is assigned, the Director constitutes a team of investigating officers, typically combining officers with legal, accounting, taxation and banking backgrounds. Any other agency investigating offences under the Companies Act must hand over its records. The team then gathers documents from the company, its bankers, its auditors and related entities, examines directors, employees and others on oath, and, where necessary, seizes books and electronic records. Modern investigations rely heavily on forensic imaging of computers and phones and on the analysis of large volumes of transaction data.

If the material collected gives an authorised officer reason to believe that a person is guilty of fraud, that officer may arrest the person, recording reasons in writing and complying with the 2017 Arrest Rules. The arrested person must be produced before a magistrate within twenty-four hours, after which remand and bail are governed by the ordinary criminal procedure as modified by the twin conditions⁵¹.

When the investigation is complete, the SFIO submits its report to the Central Government. The Ministry examines the report, often seeks legal advice, and decides whether to direct the SFIO to initiate prosecution. If it does, a complaint is filed before the Special Court with jurisdiction, and the investigation report is treated as a police report for the purpose of framing charges. From this point the case proceeds as a criminal trial, subject to the ordinary rules of evidence and procedure, and to appeals that may run all the way to the Supreme Court.

Set out in this way, the process makes one point very clear. The SFIO controls the middle of the process, the investigation, very fully. It does not control the beginning, which depends on a government order, or the end, which depends on a government direction and on the pace of the Special Court. Chapter 6 argues that this is the single most important fact about the agency's institutional design.

⁵¹ Section 212(6), The companies act, 2013.

CHAPTER**4****INTERNATIONAL PERSPECTIVES ON FRAUD INVESTIGATION AGENCIES**

This chapter looks outward. It asks how other jurisdictions arrange the relationship between investigating a corporate fraud and prosecuting it, and what India might learn from their experience. The United Kingdom, the United States and Australia are examined in turn. Each is a common-law jurisdiction with a mature company law and a developed securities market, which makes the comparison with India meaningful. At the same time, each has made very different institutional choices, which makes the comparison instructive.

4.1 The United Kingdom

The UK Serious Fraud Office, introduced in Chapter 2, remains the clearest example of the combined investigate-and-prosecute model. It is a non-ministerial government department, headed by a director acting under the superintendence of the Attorney General, with jurisdiction over serious or complex fraud, bribery and corruption in England, Wales and Northern Ireland. It does not take every case: the Director applies published criteria, such as the scale of the loss, the complexity of the evidence, the public interest and the need for the SFO's particular powers and expertise. Its investigative toolkit⁵², which the Director may require any person believed to hold relevant information to answer questions or furnish information, and may require the production of documents, including those held by banks and other third parties. Failure to comply without reasonable excuse is itself an offence.⁵³ A later amendment allows these powers to be exercised even before a case is formally accepted for investigation in suspected overseas bribery cases. In certain respects, these powers are broader than those available to the SFIO, even after India's 2017 reforms. The courts have generally upheld this breadth. In *R v. Director of Serious Fraud Office, ex parte Smith*, the House of Lords held overrides the ordinary right to silence during an investigation, while the Act separately limits the use of compelled answers as evidence against the person who gave them⁵⁴. In *R (KBR Inc) v. Director of the Serious Fraud Office*, the UK Supreme Court held that a Section 2(3) notice could not compel a foreign company to produce documents held outside the United Kingdom, setting a territorial limit.⁵⁵ And in *Director of the Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd*, the Court of Appeal took a

⁵² Section 2 of the Criminal Justice Act, 1987

⁵³ Criminal Justice Act 1987, s. 2(13).

⁵⁴ *R v. Director of the Serious Fraud Office, ex parte Smith* [1993] AC 1 (HL).

⁵⁵ *R (KBR Inc) v. Director of the Serious Fraud Office* [2021] UKSC 2.

broader view of litigation privilege than the High Court, protecting a company's internal investigation documents from compelled disclosure⁵⁶. These decisions show a strong investigative power being refined at its edges by judicial review. Because the SFO's own lawyers conduct the resulting prosecution, the agency avoids the handoff between investigator and prosecutor that, as Chapter 3 showed, has produced complications in India. Lawyers are involved from the start, so that evidence is gathered with the eventual trial in mind, which is the practical meaning of the Roskill model and the feature most often cited in its favour.

The SFO's independence has not always been beyond question. In 2006, the Director halted an investigation into alleged bribery by BAE Systems in connection with arms contracts with Saudi Arabia, after representations that continuing would damage national security. In *R (Corner House Research) v. Director of the Serious Fraud Office*, the House of Lords upheld the decision as a lawful exercise of the Director's discretion, even though it had been taken in response to a foreign government's threats⁵⁷. The case is often cited as a warning that formal independence does not entirely insulate a fraud agency from political pressure, and a reminder that, for India, the question is not simply whether the SFIO has independence on paper, but how its decisions are protected in practice. The SFO's toolkit was further expanded by the Crime and Courts Act, 2013, which introduced Deferred Prosecution Agreements (DPAs) with effect from 2014. Under a DPA, a company can avoid prosecution by admitting the relevant facts and accepting financial and remedial conditions, which a judge must approve as in the interests of justice and fair, reasonable and proportionate. DPAs are available only to organisations, not individuals. The first, with Standard Bank in 2015, concerned a failure to prevent bribery. Rolls-Royce agreed to pay about £497 million in 2017 to resolve bribery allegations across several countries, and Tesco agreed a DPA the same year over its accounting overstatement. In 2019, Serco Geografix Limited paid a penalty of £19.2 million after admitting fraud and false accounting over electronic monitoring contracts, and in 2020 Airbus entered a DPA as part of a global settlement of about €3.6 billion with British, American and French authorities⁵⁸. The mechanism matters for this study because the SFIO has no equivalent: under Indian law as it stands, it cannot secure a swift corporate resolution while the prosecution of responsible individuals continues.

⁵⁶ *Director of the Serious Fraud Office v. Eurasian Natural Resources Corporation Ltd* [2018] EWCA Civ 2006.

⁵⁷ *R (Corner House Research) v. Director of the Serious Fraud Office* [2008] UKHL 60.

⁵⁸ Crime and Courts Act 2013, Sch. 17; *SFO v. Standard Bank Plc* (Southwark Crown Court, 30 November 2015); *SFO v. Rolls-Royce plc* (2017); *SFO v. Serco Geografix Ltd* (2019); *SFO v. Airbus SE* (2020). Add case numbers and dates from your originals.

It would be misleading, however, to present the SFO as an unqualified success. Several individual prosecutions that followed its corporate DPAs failed: the trial of former Tesco executives ended without convictions, and the prosecution of two former Serco directors collapsed in 2021 after disclosure failures came to light. In the Unaoil bribery case, one defendant's conviction was quashed on appeal because of serious failings in the SFO's handling of disclosure and its contacts with an intermediary, prompting an independent review by Sir David Calvert-Smith in 2022 that was sharply critical of the office's internal management⁵⁹. Parliament's response has been to strengthen the law rather than abandon the model. The Economic Crime and Corporate Transparency Act, 2023 reformed the "identification doctrine", making it easier to attribute the criminal conduct of senior managers to a company, and created a new corporate offence of failure to prevent fraud, in force from 1 September 2025⁶⁰. Modelled on the failure-to-prevent-bribery offence⁶¹, the new offence is expected to increase the number of cases in which DPAs are available. The British experience thus suggests that a merged agency is no guarantee against failure, but that a clear institutional design makes it easier to identify what went wrong and to fix it.

4.2 The United States

The United States divides enforcement between the Securities and Exchange Commission (SEC), which brings civil actions, and the Department of Justice (DOJ), which brings criminal prosecutions. The SEC's powers derive mainly from the Securities Act of 1933 and the Securities Exchange Act of 1934, and its principal anti-fraud provision⁶². It can issue subpoenas, take testimony, and seek injunctions, disgorgement, civil penalties and officer-and-director bars. The DOJ, working with the Federal Bureau of Investigation, uses grand jury subpoenas, search warrants and the full range of criminal process. The two agencies usually pursue the same conduct in parallel and share information. After Enron, the DOJ's Enron Task Force secured convictions or guilty pleas from numerous defendants, including Jeffrey Skilling, who was sentenced in 2006 to more than twenty-four years' imprisonment, while the SEC brought parallel civil actions against senior executives. The record also shows the limits of aggressive prosecution. The Supreme Court overturned Arthur Andersen's obstruction conviction in 2005

⁵⁹ *R v. Akle* [2021] EWCA Crim 1879; Sir David Calvert-Smith, independent review of the SFO (2022).

⁶⁰ Economic Crime and Corporate Transparency Act 2023, ss. 196 and 199; Bribery Act 2010, s. 7.

⁶¹ Section 7 of the Bribery Act, 2010

⁶² Securities Act of 1933, 15 U.S.C. § 77a et seq.; Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.; Securities Exchange Act § 10(b), 15 U.S.C. § 78j(b); Rule 10b-5, 17 C.F.R. § 240.10b-5.

for faulty jury instructions, by which time the firm had already collapsed⁶³. In *Skilling v. United States* it narrowed the “honest services” fraud statute, which eventually led to a reduction in Skilling’s sentence⁶⁴. More recently, *SEC v. Jarkesy* held that a defendant facing civil penalties for securities fraud is entitled to a jury trial, limiting the SEC’s use of in-house administrative proceedings⁶⁵.

The American response to the scandals that followed Enron, including WorldCom, Adelphia and Global Crossing, was to formalise coordination rather than merge the two agencies. In July 2002 the President created the Corporate Fraud Task Force, which brought the DOJ, SEC, FBI and other agencies under one coordinating structure while preserving their separate civil and criminal mandates; in 2009 it was succeeded by the broader Financial Fraud Enforcement Task Force. In the same year as the original task force, Congress enacted the Sarbanes-Oxley Act, 2002, which required chief executives and finance officers to certify financial statements, strengthened internal-control requirements and created the Public Company Accounting Oversight Board (PCAOB)⁶⁶. The Dodd-Frank Act, 2010 later added a whistleblower programme that pays awards for original information leading to successful SEC enforcement. The DOJ has also developed detailed policy on corporate prosecution, covering when to charge a company, the use of deferred and non-prosecution agreements, and credit for voluntary disclosure and cooperation. Scholars such as Brandon Garrett question whether such negotiated settlements truly deter misconduct⁶⁷, but empirical work by Karpoff, Lee and Martin finds that, once enforcement does occur, individual managers face serious consequences, including job loss, fines and imprisonment.

The American experience has a direct Indian connection. Because Satyam’s shares were listed in New York, the company and its auditors also faced American enforcement. In 2011 Satyam settled with the SEC and agreed to pay a civil penalty of ten million dollars, while the Indian affiliates of PricewaterhouseCoopers paid six million dollars to the SEC and a further one and a half million dollars to the PCAOB⁶⁸. These penalties were resolved years before the Indian

⁶³ *Arthur Andersen LLP v. United States*, 544 U.S. 696 (2005).

⁶⁴ *Skilling v. United States*, 561 U.S. 358 (2010). Skilling was resentenced in 2013 to fourteen years.

⁶⁵ *SEC v. Jarkesy*, 603 U.S. 109 (2024).

⁶⁶ Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (see in particular §§ 302 and 404 and Title I).

⁶⁷ Brandon L. Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (Harvard University Press 2014).

⁶⁸ U.S. Securities and Exchange Commission, Press Release 2011-82 (Apr. 5, 2011); PCAOB order against the Indian PwC affiliates (2011).

criminal prosecutions reached judgment, which illustrates the speed a well-developed civil enforcement track can deliver. The American model is also instructive because it shows that a single merged agency of the British kind is not the only answer to the coordination problem. A formal coordination mechanism between separately empowered agencies keeps each civil or criminal mandate distinct while removing the duplication and delay of uncoordinated parallel investigations. That is a second and equally coherent model, and it is much closer to India's present arrangement of separate SFIO, Registrar, CBI, ED and SEBI jurisdictions than the unified British model.

4.3 Australia

Australia offers a third model, in which a single regulator, the Australian Securities and Investments Commission (ASIC), combines civil regulatory and investigative functions and, in coordination with the Commonwealth Director of Public Prosecutions (CDPP), takes part in criminal enforcement. ASIC traces its origins to 1991, when the Australian Securities Commission began operations, replacing the National Companies and Securities Commission and the separate corporate affairs offices of the states and territories⁶⁹. It was renamed in 1998 when it took over consumer protection functions for financial services, and it now operates under the Australian Securities and Investments Commission Act 2001 and the Corporations Act 2001⁷⁰. Its investigative powers are extensive. It may open an investigation where it has reason to suspect a contravention of the corporation's legislation, compel persons to attend examinations and answer questions on oath, and require the production of books⁷¹. Unlike the UK SFO, however, ASIC does not itself prosecute serious offences. It assembles a brief of evidence and refers the matter to the CDPP, which decides independently whether to prosecute, while ASIC retains the power to bring civil penalty proceedings in its own name, seek the disqualification of directors, and accept enforceable undertakings.

This dual track has produced some of the most important corporate law decisions in Australian history. After the collapse of HIH Insurance in 2001, the largest corporate failure in the country's history, a Royal Commission chaired by Justice Owen documented serious governance failures, and ASIC's investigations led to criminal convictions of senior figures, including the company's

⁶⁹ Australian Securities Commission Act 1989 (Cth); the Commission commenced operations on 1 January 1991.

⁷⁰ Australian Securities and Investments Commission Act 2001 (Cth); Corporations Act 2001 (Cth). The renaming took effect on 1 July 1998 under the Financial Sector Reform (Consequential Amendments) Act 1998 (Cth).

⁷¹ Australian Securities and Investments Commission Act 2001 (Cth) s 13 (investigations), s 19 (examination of persons on oath) and s 33 and related provisions (production of books).

founder⁷². ASIC's civil penalty proceedings, meanwhile, shaped the law on directors' duties. In the James Hardie litigation, the High Court upheld findings that directors had breached their duties by approving a misleading announcement about asbestos compensation funding⁷³, and in the Centro case the Federal Court held that directors could not escape responsibility for financial statements simply by relying on management and auditors⁷⁴. ASIC has also faced criticism. The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, chaired by Kenneth Hayne, concluded in 2019 that ASIC had too often preferred negotiated outcomes to litigation and recommended that it begin from the question "why not litigate?" Parliament raised the maximum civil and criminal penalties for corporate misconduct in the same year and, in 2021, established a Financial Regulator Assessment Authority to review ASIC's effectiveness periodically.

The Australian model matters for this study because it presents a third institutional configuration: a single regulator holds both civil and investigative powers, refers only the criminal dimension of its work to a separate prosecuting authority, and keeps direct civil enforcement power over the same conduct rather than depending wholly on another agency's cooperation. It sits between the fully merged British model and the fully separated American model. It is also the model closest to India's own position. Like ASIC, the SFIO investigates but does not itself decide on prosecution. The crucial difference is that the SFIO, unlike ASIC, has no independent civil enforcement power to fall back on while a criminal prosecution makes its slow way through the courts. When an ASIC criminal referral stalls, the regulator can still pursue civil penalties and disqualification; when an SFIO prosecution stalls, the agency has nothing else to offer.

4.4 A Note on Singapore

Although this study's detailed comparison is limited to the United Kingdom, the United States and Australia, a brief note on Singapore is useful, because it shows how a smaller Asian financial centre has adapted the same ideas. White-collar crime in Singapore is investigated principally by the Commercial Affairs Department, a specialist department of the Singapore Police Force staffed by investigators with accounting and financial expertise. Prosecutions are conducted by

⁷² HIH Royal Commission, *The Failure of HIH Insurance* (Commonwealth of Australia, 2003) (Justice Neville Owen); *R v Williams* [2005] NSWSC 315 and related sentencing decisions.

⁷³ *ASIC v Hellicar* (2012) 247 CLR 345; [2012] HCA 17.

⁷⁴ *ASIC v Healey* (2011) 196 FCR 291; [2011] FCA 717.

the Attorney-General's Chambers. The Monetary Authority of Singapore, the financial regulator, has its own civil penalty powers for market misconduct under the Securities and Futures Act. Two features of the Singapore arrangement stand out. First, since 2015 the Monetary Authority and the Commercial Affairs Department have jointly investigated most market misconduct cases from the outset, deciding together, at an early stage, whether a case should proceed on a civil or a criminal track. This avoids the situation, familiar in India, in which different agencies investigate the same conduct in parallel and in sequence. Second, Singapore introduced a deferred prosecution agreement regime for companies in 2018, drawing on the British model. Singapore therefore combines, in a compact form, the coordination benefits of the American approach, the civil track of the Australian approach and the negotiated corporate resolution of the British approach. It is a useful reminder that these design choices can be combined, and need not be treated as all-or-nothing alternatives.

4.5 Comparative Observations

Read together, these three jurisdictions confirm that there is no single, universally accepted answer to how investigation and prosecution should relate to each other in corporate fraud cases. Each system has adapted the basic Roskill insight, that specialised and combined expertise is essential, to its own constitutional and institutional traditions.

Several common features do emerge, however. First, each comparator gives its fraud agency, or its network of agencies, a clear and settled route from investigation to enforcement. Second, each provides at least one alternative to full criminal prosecution, whether a DPA in the United Kingdom, civil penalties and settlements in the United States, or civil penalty proceedings and enforceable undertakings in Australia. Third, in each jurisdiction, failures of enforcement have prompted public inquiries and legislative reform aimed at fixing a specific identified weakness rather than at replacing the whole institutional model.

It is this range of coherent alternatives, rather than any one model treated as uniquely correct, that Chapter 6 draws on in building the institutional effectiveness framework applied to the SFIO. Before that, Chapter 5 returns to India to look more closely at how Indian courts have responded to the SFIO's use of its powers.

CHAPTER**5****JUDICIAL RESPONSE TO THE SFIO'S POWERS**

Chapter 3 examined the foundational litigation on the SFIO's statutory powers. This chapter takes a wider view. Rather than looking at any single case in isolation, it follows the SFIO's engagement with the courts across a range of matters before the Supreme Court, the High Courts and the Special Courts constituted under the Companies Act. The aim is to identify recurring patterns in the way Indian courts have policed the boundaries of the SFIO's powers, and to ask what those patterns reveal about the agency's institutional design.

5.1 Testing Multi-Agency Coordination

After the Satyam founder's confession in January 2009, the Government assigned the matter to the SFIO, and the CBI and other agencies began their own inquiries. The SFIO's work was unusually fast by Indian standards. It produced a preliminary report of about fourteen thousand pages and then a final report of roughly twelve thousand pages, in some thirty volumes, within the three-month deadline the Government had set.⁷⁵

What followed shows how the Indian system divides a single fraud between agencies. The Ministry of Corporate Affairs, after obtaining the opinion of the Solicitor General, directed the SFIO to prosecute a large number of charges under the Companies Act, 1956 against the company's founder, his brother, its former chief financial officer and its statutory auditors. The CBI, meanwhile, prosecuted related charges of cheating, forgery and criminal conspiracy under the Indian Penal Code, and the Enforcement Directorate pursued the money laundering and cross-border aspects of the fund transfers.⁷⁶ SEBI conducted its own proceedings and, in 2014, barred the founder and others from the securities market and ordered disgorgement of unlawful gains.

The outcomes came slowly and in pieces. A special court for economic offences in Hyderabad convicted the founder and others in several of the SFIO's Companies Act cases in December 2014, imposing short sentences of imprisonment and fines. In April 2015 a special CBI court convicted the founder and nine others in the main criminal case and sentenced them to seven years' imprisonment. Appeals followed, and sentences were suspended pending their disposal. By the time any court had pronounced on the Indian charges, the company's American

⁷⁵ "SFIO Concludes Satyam Probe", Business Standard, Apr. 15, 2009.

⁷⁶ "Satyam Case: SFIO to Begin Prosecution".

shareholders had already received settlements and the SEC had concluded its enforcement action.

The Satyam matter is significant for this chapter not because it produced a single landmark appellate ruling, but because it is the clearest example in the reported record of the multi-agency coordination problem this study returns to in Chapter 6. Three agencies, the SFIO, the CBI and the ED, each pursued a different slice of the same fraud under three different statutes, while a fourth, SEBI, acted under a fifth. Duplication was avoided only because the Government took the further, non-statutory step of directing which agency would pursue which charges. The Companies Act itself supplied no coordinating mechanism.

5.2 Testing the Scope of SFIO Findings

The SFIO's first chargesheet in the IL&FS matter was filed before the Special Court in Mumbai in May 2019. It named thirty entities and individuals in connection with IL&FS Financial Services Limited and identified a nine-member "coterie" of former senior managers who, the SFIO alleged, had colluded with statutory auditors and independent directors to run the company "as a personal fiefdom."⁷⁷ The chargesheet recommended action against the company's auditors for their role, and it described a specific transaction in which the company allegedly used its lending to help a borrower's promoter settle a debt owed to another institution, a structure the SFIO characterised as a breach of Reserve Bank of India lending norms as well as of the Companies Act.⁷⁸

Before the chargesheet was filed, the SFIO had already exercised its arrest powers against senior IL&FS executives. In April 2019, it arrested Ramesh Bawa, the former Managing Director of IL&FS Financial Services, and Hari Sankaran, the group's former Vice-Chairman. Both spent extended periods in custody while seeking bail under stringent legal conditions. The Enforcement Directorate later opened its own money laundering investigation, and the NCLT-appointed board pursued a separate resolution process aimed at recovering value for creditors.

This matter tested a different dimension of the SFIO's capacity from Satyam. Satyam had tested its ability to work alongside parallel investigators. IL&FS tested its ability to conduct a genuinely large-scale forensic investigation spread across hundreds of group entities, drawing on inspection of accounts, a full forensic audit and data recovered from seized devices and email

⁷⁷ "IL&FS Case: SFIO Recommends Action Against Auditors, Action for Recovery of Losses", The Week, June 4, 2019.

⁷⁸ "IFIN Violated RBI Norms to Help Sivasankaran Pay Off IFCI Loan: SFIO", Business Standard, June 4, 2019.

servers. It also tested its ability to turn the results into a chargesheet naming specific people, specific transactions and specific regulatory breaches, rather than a general finding of mismanagement. The scale of the work, which covered only one of several group entities under investigation, shows both the SFIO's real forensic capacity and the sheer volume of resources that a single major investigation now demands.

The IL&FS matter also produced a significant ruling on auditor accountability. The Government sought to remove the group's auditors of the Companies Act, and the auditors challenged the constitutional validity of that provision. The Supreme Court upheld it in 2023, confirming that the NCLT may direct a change of auditor where the auditor has acted fraudulently or abetted fraud.⁷⁹ Although that case did not directly concern the SFIO's powers, it was built on the factual foundation laid by the SFIO's investigation.

5.3 Testing Arrest Procedure

The Adarsh Group litigation, introduced in Chapter 3, deserves further attention for what it reveals about the procedural flashpoints that the SFIO's arrest power tends to produce. The Delhi High Court's initial ruling in favour of the accused turned entirely on timing. It held that an arrest made after the expiry of the originally fixed investigation period, and before any extension of that period had been formally granted, was unlawful, regardless of whether an extension was later granted.⁸⁰

The Supreme Court's 2019 judgment did not adopt that reasoning. It held instead that habeas corpus was the wrong remedy where the accused were in custody under a judicial remand order, and that the High Court should not have entertained the petitions in that form.⁸¹ The 2022 judgment then dealt with default bail and settled that the filing of the complaint within time, rather than the taking of cognizance, is what defeats a claim to statutory bail.⁸²

Read as a sequence, these rulings show that the SFIO's arrest power produced litigation on at least three distinct procedural questions in a single case: whether an arrest after the expiry of the investigation period was valid, whether habeas corpus could lie against a judicial remand, and when the right to default bail arises in an SFIO prosecution. The SFIO had to litigate each of these questions to the Supreme Court before reaching a settled outcome. This is not evidence that

⁷⁹ Deloitte Haskins & Sells LLP v. Union of India (Supreme Court of India, 2023).

⁸⁰ Rahul Modi v. Union of India & Ors., W.P.(Crl.) 3842/2018 (Delhi High Court, order dated Dec. 20, 2018).

⁸¹ Serious Fraud Investigation Office v. Rahul Modi & Ors., (2019) 5 SCC 266.

⁸² Serious Fraud Investigation Office v. Rahul Modi & Ors., Criminal Appeal Nos. 185-186 of 2022 (decided Feb. 7, 2022).

the arrest power is being misused. It is evidence that a coercive power brought into effective operation as recently as 2017, without any existing body of interpretive case law, will predictably pass through a period of procedural testing before its boundaries are settled.

5.4 Testing Constitutional Validity

The Bhushan Steel matter raised the stakes from procedure to constitutionality. When the Delhi High Court granted interim bail to Neeraj Singal in August 2018, it questioned whether the twin-condition bail standard could survive the Supreme Court's decision in Nimesh Tarachand Shah, and whether the use of compelled statements was consistent with Article 20(3).⁸³ The Supreme Court's response was telling. It did not cancel the bail, but it stayed the High Court's broader observations and took the constitutional questions to itself, warning that such observations could affect investigations under the Companies Act across the country.

The episode shows the Supreme Court acting as a guardian of the institutional framework as a whole. It was prepared to protect the liberty of an individual accused, but not to allow a single bail hearing to become the vehicle for unsettling the SFIO's entire statutory scheme. In later proceedings, the SFIO's attempts to cancel bail granted to other Bhushan Steel accused also reached the Supreme Court, further illustrating how much of the agency's litigation energy is consumed by questions of custody rather than questions of guilt.

5.5 Testing Concurrent Jurisdiction

A separate line of litigation has examined the exclusive investigative authority of the Serious Fraud Investigation Office (SFIO) once a case is assigned to it. In proceedings challenging the transfer of an investigation to the SFIO at an advanced stage, a High Court held that the submission of interim or final reports by other investigating authorities does not exhaust the Central Government's power to transfer the matter to the SFIO at a later stage. The Court further observed that transferring an ongoing investigation does not, by itself, constitute an arbitrary exercise of power, as the transfer mechanism is intended to prevent parallel investigations by requiring other agencies to discontinue their inquiries once the SFIO assumes responsibility.

The decision confirms that courts have interpreted this cessation mechanism as a strong jurisdictional restriction. It allows the SFIO to take over investigations already underway before other authorities and reinforces its position as the exclusive investigating body under the

⁸³ "SC Upholds Delhi HC Order Granting Bail to Neeraj Singal, Stays Other Parts of The Order", LiveLaw, Sept. 4, 2018.

Companies Act once a matter has been assigned to it. In this respect, the SFIO's position resembles that of the UK Serious Fraud Office (SFO), which exercises control over cases accepted for investigation, going beyond what a purely textual reading of the Indian statutory framework might suggest.

5.6 Testing Interim Judicial Intervention

The Sahara matter shows a different kind of judicial intervention. In 2018 the Central Government ordered the SFIO to investigate nine companies connected with the Sahara group. In December 2021 the Delhi High Court stayed the operation of the government orders directing the investigation and granted interim protection to the companies and their officers. On 26 May 2022, in *Serious Fraud Investigation Office v. Sahara Housing Investment Corporation Ltd.*, a Supreme Court bench of D.Y. Chandrachud and Bela M. Trivedi JJ. set aside the High Court's order, holding that it was wrong to stay an investigation at the interim stage.⁸⁴

The case adds an important point to the picture. Interim orders staying an investigation can freeze an inquiry for months or even years, and by the time they are lifted the practical value of the investigation may have been seriously reduced. The Supreme Court's insistence that investigations should ordinarily be allowed to proceed, with challenges reserved for the stage at which concrete action is taken, offers some protection against this risk. But it also shows how dependent the SFIO is on appellate correction of interim orders, which itself takes time.

5.7 Bail Jurisprudence Under the Twin Conditions

Beyond the individual cases discussed above, the twin-condition bail standard has produced a body of Special Court and High Court bail jurisprudence that is markedly stricter than the ordinary law of bail.⁸⁵ Courts have repeatedly refused bail to accused persons in large SFIO cases on the ground that the material collected by the agency does not permit the court to conclude that there are reasonable grounds for believing the accused is not guilty.

This jurisprudence closely mirrors the case law on similarly worded provisions in other Indian economic-offence statutes. The position is particularly significant in money-laundering cases, where stringent bail conditions apply. Although the Supreme Court struck down the original restrictions in *Nikesh Tarachand Shah v. Union of India* in 2017, Parliament subsequently

⁸⁴ "Supreme Court sets aside Delhi High Court's stay on SFIO probe into Sahara companies", Bar and Bench, May 26, 2022.

⁸⁵ Companies Act, 2013 (Act 18 of 2013), s. 212(6), as amended by the Companies (Amendment) Act, 2017.

amended the law. In *Vijay Madanlal Choudhary v. Union of India* (2022), the Supreme Court upheld the revised twin conditions governing bail.⁸⁶ Because the SFIO's bail standard was modelled on a similar legal framework, the constitutional scrutiny of the corresponding PMLA provision has strengthened the constitutional validity of the SFIO's bail requirements. At the same time, the Supreme Court has more recently emphasised, in several bail matters, that prolonged pre-trial detention can justify bail even under stringent statutes where the trial is unlikely to conclude within a reasonable time. That emphasis is directly relevant to SFIO cases, where trials involving thousands of pages of documents can run for many years.

Parliament's choice in 2017 to model the SFIO's arrest safeguards on an established economic-offence template, rather than inventing a new standard specific to corporate fraud, has therefore produced a body of case law that draws heavily, and largely successfully, on decades of interpretation of similar provisions elsewhere in Indian law.

5.8 Parallel Proceedings and the Problem of Overlap

A final set of issues, which arises in almost every major SFIO case, concerns the relationship between the SFIO's proceedings and those of other agencies investigating the same conduct under different statutes. Once the SFIO has been assigned a case, other agencies are barred from investigating offences under the Companies Act. However, this restriction does not extend to offences under the *Bhartiya Nyaya Sanhita*, the Prevention of Money Laundering Act, or the Prevention of Corruption Act. In practice, therefore, a major corporate fraud frequently produces an SFIO complaint before a Special Court under the Companies Act, a CBI or police case for cheating and conspiracy, an Enforcement Directorate case for money laundering with its own attachment of assets, and SEBI proceedings for securities law violations.

Courts have generally declined to treat these parallel proceedings as unlawful duplication, on the reasoning that each concerns a distinct offence under a distinct statute. Accused persons have often argued that they are being forced to defend themselves repeatedly against what is, in substance, a single set of allegations, and that the protection against double jeopardy in Article 20(2) of the Constitution should apply. Those arguments have rarely succeeded, because Article 20(2) protects against a second prosecution and punishment for the same offence, and offences under different statutes with different ingredients are not treated as the same offence.

⁸⁶ *Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929.

The practical consequences of parallel proceedings are nonetheless significant. Witnesses may be examined by several agencies, and their statements may diverge. Documents seized by one investigative agency may not be easily accessible to another, despite provisions intended to facilitate information sharing and inter-agency coordination. Assets may be attached by the Enforcement Directorate while creditors and the NCLT are trying to resolve the company's debts, as happened in a number of insolvency cases until the Insolvency and Bankruptcy Code was amended to protect the assets of companies taken over by new owners through the resolution process. And the different proceedings may move at very different speeds, so that the outcome of one becomes a subject of argument in the others.

None of these problems is unique to India, and the American experience shows that parallel civil and criminal proceedings can be managed effectively. But they are managed effectively only where there is a deliberate framework for doing so. The Indian cases surveyed in this chapter suggest that, in the absence of such a framework, the burden of managing overlap falls on the courts, which deal with it case by case, often at the bail stage and often under considerable time pressure.

5.9 Synthesis: Patterns in the Judicial Response

Reading these matters together, rather than as isolated disputes, three patterns emerge.

First, the great majority of litigation testing the SFIO's powers has been about the procedural exercise of those powers: the timing of an extension, the correct remedy against a remand order, the scope of a concurrent-jurisdiction transfer, the availability of interim stays, and the standard for bail. It has rarely been about the substance of the agency's fraud findings. None of the cases examined in this chapter involved a court disturbing, on the merits, an SFIO finding of fraud.

Second, where courts have intervened against the SFIO, they have generally done so narrowly and temporarily, as the Delhi High Court did in the Adarsh, Bhushan Steel and Sahara matters, rather than permanently closing off the agency's ability to act. The Supreme Court's repeated restoration of the SFIO's position suggests that Indian courts, while willing to police the agency's compliance with its own procedure closely, have not shown any broader institutional reluctance to support its substantive mandate.

Third, and most significantly for the next chapter, none of the matters surveyed here concerned a dispute over the SFIO's relationship to prosecution as distinct from investigation. The litigation is almost entirely about the investigative and coercive half of the agency's work. This is not a gap

in the research. It is itself a finding, and an important one. It suggests that the question this study identifies as most pressing, the SFIO's relationship with the prosecutorial process, has not yet produced the appellate case law that might test and refine it, precisely because that relationship remains as underdeveloped as Chapter 3 found it to be. Delays at the prosecution stage do not usually generate landmark judgments. They simply generate more delay.

CHAPTER

6

TOWARDS AN INSTITUTIONAL EFFECTIVENESS FRAMEWORK

This chapter is the original contribution of the study. The previous chapters have produced three findings that need to be brought together. Chapter 3 found that the SFIO's investigative and coercive powers are now broadly comparable to those of its international counterparts. Chapter 4 found that the United Kingdom, the United States and Australia each answer the question of how investigation should relate to prosecution differently, but that each does so through a clear and coherent institutional design. Chapter 5 found that the SFIO's case law is almost entirely about the investigative half of its work, and has not yet tested its relationship to prosecution, because that relationship is still underdeveloped. This chapter draws these findings together into an institutional effectiveness framework, and then applies the framework comparatively to show precisely where the SFIO's design departs from that of its counterparts, and with what consequences.

6.1 Formulating the Institutional Effectiveness Framework

6.1.1 Need for the framework

Discussions of the SFIO in India often swing between two extremes. One treats the agency as powerful and effective because of its high-profile investigations and arrests. The other treats it as weak and ineffective because so few of its cases end in final convictions within a reasonable time. Neither view is very helpful for reform, because neither identifies which particular feature of the agency's design explains its performance. A structured framework allows the question to be broken into parts, so that strengths and weaknesses can be located more precisely.

An agency's effectiveness in investigating and ultimately bringing to account a sophisticated corporate fraud cannot be reduced to a single institutional feature. It depends on how several distinct design choices interact, and the comparative material in Chapter 4 shows those choices combined in different ways. On the basis of that material, and of the doctrinal account developed

in Chapters 2, 3 and 5, this study proposes a five-element framework for assessing an agency's institutional design: investigative independence, coercive and evidence-gathering powers, prosecutorial integration, resource and technical capacity, and accountability and judicial oversight.

6.1.2 Investigative Independence

The first element concerns how far an agency's decision to open and continue an investigation is insulated from case-by-case executive direction. The SFIO's investigations are triggered by an order of the Central Government, or by a Tribunal-supervised process. Formally, then, the decision to investigate a particular company always comes from outside the agency.⁸⁷ The contrast with the UK SFO is clear. The SFO's Director has an independent statutory discretion to accept a case for investigation once it meets the office's published criteria, without needing a fresh ministerial order each time. ASIC, likewise, can open an investigation on its own initiative whenever it has reason to suspect a contravention.

This difference should not be overstated. Once an investigation has been assigned, the SFIO's Director exercises considerable operational independence, and the requirement of a government order is in one sense simply the statutory trigger, not a source of continuing executive control over how the investigation is conducted. The British experience in Corner House also shows that formal independence does not remove political pressure altogether.⁸⁸ Nonetheless, the requirement that every investigation begin with an external order adds a step, and a possible source of delay and perceived selectivity, that a self-initiating structure avoids. This study therefore treats investigative independence as an area of genuine, if moderate, comparative disadvantage for the SFIO.

6.1.3 Coercive and Evidence-Gathering Powers

The second element concerns the extent of an agency's powers to compel evidence and detain suspects during an investigation. Chapter 3 demonstrated that the SFIO now possesses substantial investigative and arrest powers, which became operational in 2017. The stringent bail conditions and procedural safeguards governing arrests, examined in Chapter 5, impose greater procedural constraints than those applicable to the SFO's exercise of its investigative powers

⁸⁷ Companies Act, 2013 (Act 18 of 2013), ss. 212(1), 241(2).

⁸⁸ R (Corner House Research) v. Director of the Serious Fraud Office, [2008] UKHL 60.

under English law. However, these safeguards also make SFIO arrests particularly consequential, as securing bail after arrest can be difficult.⁸⁹

On this element, the gap between the SFIO and its counterparts is, on the evidence examined in this study, the narrowest of the five. The SFIO's powers to summon, to examine on oath, to compel production of documents, to seize records and to arrest are functionally comparable to those available in the United Kingdom, the United States and Australia, even if the specific safeguards differ in detail. In one respect, the power of arrest itself, the SFIO is arguably better equipped than ASIC, which relies on police for arrests. This study accordingly finds that coercive power, considered on its own, is not the SFIO's principal weakness. That finding bears directly on the hypothesis set out in Chapter 1.

6.1.4 Prosecutorial Integration

The third element, and the one this study identifies as the SFIO's most significant point of divergence, concerns whether the agency that investigates a fraud also prosecutes it, or whether that function passes to another body, and if so, how smoothly. Chapter 4 showed that the three comparators answer this question differently, but each with a clear design. The United Kingdom merges investigation and prosecution in the SFO. The United States divides the two functions between the SEC and the DOJ, but coordinates them through standing structures and long-established practice. Australia allows ASIC to keep its own civil enforcement power while referring only the criminal dimension of a matter to the CDPP.

The SFIO's position is closest to a partial version of the Australian model, in that it investigates but does not itself decide whether to prosecute. It is the Central Government that, after examining the report and taking legal advice, directs the SFIO to initiate prosecution, and the investigation report is then filed before a Special Court constituted.⁹⁰ Unlike ASIC, however, the SFIO has no civil enforcement track of its own. Once an investigation ends, its entire institutional output flows into a single criminal complaint, filed and pursued through a Special Court process that the agency does not control in the way the UK SFO controls its own prosecutions.

This is the specific gap the hypothesis in Chapter 1 anticipated. The SFIO's coercive powers, as the previous section found, are now broadly adequate. What remains underdeveloped is the

⁸⁹ Companies Act, 2013 (Act 18 of 2013), s. 212(6)-(10); Criminal Justice Act 1987 (UK), s. 2.

⁹⁰ Companies Act, 2013 (Act 18 of 2013), s. 435; s. 212(12)-(15).

machinery connecting a completed SFIO investigation to a concluded case. None of the three comparator jurisdictions has a gap of quite this kind. Each gives its investigating agency either direct control over prosecution, as the SFO has, or a clearly coordinated handoff to a body geared to prosecute promptly, as the American and Australian arrangements provide, together with at least one non-criminal route to enforcement.

6.1.5 Resource and Technical Capacity

The fourth element concerns an agency's forensic, technical and human capacity relative to the scale of the matters it must investigate. Chapter 5's account of the IL&FS investigation, which involved inspecting accounts across hundreds of entities and recovering data from seized devices and servers, shows that the SFIO can mount an investigation of very substantial scale and technical sophistication when the matter demands it.⁹¹

This study is nonetheless cautious about drawing strong conclusions on this element. The available material does not permit a rigorous comparison of staffing levels, per-case budgets or average investigation times across the four jurisdictions. Parliamentary committees and press reports have from time to time pointed to vacancies in the SFIO's sanctioned strength and its reliance on officers on deputation, but comparable figures are not published systematically. What can be said with confidence is that the SFIO's demonstrated capacity in IL&FS is not, on the evidence examined here, obviously inferior to that of its counterparts in comparable matters. This element is therefore treated as broadly neutral, pending the systematic data collection recommended in Chapter 7.

6.1.6 Accountability and Judicial Oversight

The fifth element concerns the mechanisms by which an agency's use of its powers is held to account, whether through judicial review of specific acts, parliamentary oversight or independent review. Chapter 5 showed that Indian courts, through the *Adarsh*, *Bhushan Steel*, *The Sahara* and transfer-related litigation have developed a significant and continuously evolving body of case law that scrutinises the SFIO's compliance with established procedural requirements and ensures that its investigative powers are exercised in accordance with the law.⁹²

On this element the SFIO compares reasonably well with its counterparts. The requirement that arrests be based on recorded reasons, the production of the arrested person before a magistrate

⁹¹ "IFIN Violated RBI Norms to Help Sivasankaran Pay Off IFCI Loan: SFIO", *Business Standard*, June 4, 2019.

⁹² *Serious Fraud Investigation Office v. Rahul Modi & Ors.*, (2019) 5 SCC 266.

within twenty-four hours, and the closely supervised bail process together impose a level of internal and judicial scrutiny on coercive power that is, if anything, more elaborate than the safeguards around the UK SFO's Section 2 powers. What India lacks, by comparison with Australia's Financial Regulator Assessment Authority or the independent reviews commissioned in the United Kingdom, is a standing mechanism for reviewing the SFIO's overall performance. This study nonetheless finds accountability and oversight to be a genuine comparative strength of the Indian model, a finding that qualifies, rather than undermines, the central conclusion that prosecutorial integration is the SFIO's principal weakness.

6.2 Comparative Application of the Framework

Table 6.1 applies the five-element framework to each of the four jurisdictions examined in this study. Each agency's position on each element is classified as a comparative strength, a comparative weakness, or broadly neutral relative to the other three systems.

Table 6.1: Comparative Application of the Institutional Effectiveness Framework

Framework Element	SFIO (India)	SFO (UK)	SEC/DOJ (US)	ASIC (Australia)
Investigative Independence	Moderate weakness (Government-triggered)	Strength (self-initiating within published criteria)	Neutral (agency-initiated, but divided)	Strength (self-initiating on reasonable suspicion)
Coercive and Evidence-Gathering Powers	Neutral (broadly comparable since 2017)	Strength (broad Section 2 powers)	Neutral (subpoena and grand jury powers)	Strength (compulsory examination powers)
Prosecutorial Integration	Weakness (prosecution on Government direction; no civil track)	Strength (combined investigate-and-prosecute)	Neutral (separate but coordinated SEC and DOJ)	Moderate strength (retains civil track; refers criminal matters)
Resource and Technical Capacity	Neutral (demonstrated capacity in IL&FS)	Neutral (historically resource-constrained)	Strength (extensive federal resources)	Neutral
Accountability and Judicial Oversight	Strength (elaborate arrest and bail safeguards)	Neutral (established, with independent reviews)	Neutral (constitutional and jury-trial safeguards)	Neutral (administrative law and FRAA review)

6.3 Findings from the Comparative Application

The classification in Table 6.1 produces three findings that bear directly on the hypothesis advanced in Chapter 1.

First, the SFIO shows a clear comparative weakness on only one of the five elements, prosecutorial integration, and a moderate weakness on a second, investigative independence. It shows a genuine strength on accountability and judicial oversight, and a neutral position on the remaining two. This is a considerably more favourable picture than the common impression of the SFIO as an under-resourced or under-powered agency would suggest. The gap this study identifies is specific and localised, not general.

Second, prosecutorial integration is the only element on which every one of the three comparators outperforms the SFIO, whether through the United Kingdom's full institutional merger, the United States coordinated separation, or Australia's retained civil track alongside criminal referral. In other words, every alternative examined in this study gives its investigating agency either direct control over prosecution or a robust alternative route to enforcement while a criminal referral is pending. The SFIO alone has neither.

Third, this finding substantially confirms the hypothesis while refining it in one respect. The hypothesis proposed closer alignment with either the British or the American model as the remedy. The comparative application in this chapter suggests that the Australian model, which would give the SFIO a civil enforcement track alongside its existing criminal route, may be the more readily achievable reform. It would not require the wholesale restructuring that adopting the British merged model would involve, nor the creation of an entirely new coordinating body on the American pattern.

6.4 Testing the Framework Against the Case Studies

A framework of this kind is only useful if it helps explain what actually happened in real cases. It is worth testing it briefly against the two principal case studies used in this dissertation.

In Satyam, the SFIO's investigation was fast and thorough, which is consistent with the framework's finding that coercive power and technical capacity are not the agency's weak points. The delay came later. Prosecution under the Companies Act depended on a government decision taken after legal advice, the charges were divided between agencies by executive direction, and the trials then ran for more than five years. American enforcement against the same company and its auditors, conducted through a civil track, concluded much sooner. That is exactly the pattern the framework predicts for an agency with strong investigative powers but weak prosecutorial integration and no civil track.

In IL&FS, the SFIO again showed impressive investigative reach and used its arrest powers decisively. Once more, however, the conclusion of the matter depended on Special Court proceedings over which the agency has limited control, while the more immediate consequences for the company's auditors came through a different route, the NCLT. The most effective non-criminal remedies were available to the Government and the Tribunal, not to the SFIO itself. Had the SFIO possessed its own civil track, it could have sought director disqualification, disgorgement or civil penalties directly, using the evidence it had already gathered.

6.5 Policy Implications of the Framework

The framework has a number of practical implications that go beyond the specific recommendations made in Chapter 7. The most important is that reform effort should be directed where the gap actually lies. Public debate after major frauds in India has tended to focus on giving investigators more powers, stiffer penalties or more staff. The framework suggests that, at least as far as the SFIO is concerned, further increases in coercive power are likely to yield diminishing returns. The agency can already arrest, summon and seize. What it cannot do is convert its findings into timely outcomes without depending on decisions and processes that lie outside its control.

A second implication concerns the relationship between the SFIO and other agencies. The comparative material shows that coordination problems are not solved by giving one agency exclusive jurisdiction over everything. The United States has never done so, and Singapore achieves coordination through joint investigation rather than exclusivity. Once a case is assigned, the SFIO has exclusive jurisdiction over offences under the Companies Act. However, this exclusivity does not extend to offences under other statutes, nor would it be practical or desirable to extend it that far. What is needed is a structured method of deciding, early in a case, which agency will pursue which aspect of the conduct, and of sharing evidence efficiently between them.

A third implication is that the strengths of the Indian model should be protected rather than traded away in pursuit of speed. The procedural safeguards surrounding SFIO arrests, and the willingness of courts to scrutinise compliance with them, are a genuine source of legitimacy. Reforms that sought to speed up the process by weakening those safeguards would risk exchanging one problem for another. The better course is to leave the safeguards on coercive

powers intact and to concentrate reform on the post-investigation stage, where delay causes the most harm and where the safeguards are least engaged.

Finally, the framework suggests that the SFIO's performance should be judged by outcomes rather than by activity. The number of investigations assigned, arrests made or reports submitted says relatively little about whether the agency is achieving its purpose. Measures such as the time taken from the start of an investigation to a final outcome, the proportion of investigations that lead to some form of sanction, and the amounts recovered for victims would give a far more meaningful picture. Collecting and publishing such data is therefore not a peripheral matter, but a precondition for evaluating any of the reforms this study proposes.

6.6 Limitations of the Framework

The framework, and its application in this chapter, has two limitations that should be stated candidly. First, classifying each element as a strength, a weakness or neutral is a qualitative judgment based on the doctrinal and comparative material examined in Chapters 2 to 5. It is not a quantitative measure derived from systematic data on investigation times, conviction rates or resource allocation in the four jurisdictions. Such data, where it exists at all, was not uniformly available for all four systems within the scope of this study.

Second, the framework necessarily simplifies institutional arrangements that are, in every jurisdiction, more textured than a single classification per element can capture. The Australian combination of a civil track and criminal referral, for example, operates differently in practice depending on the type of misconduct involved, and American enforcement varies considerably between federal districts and over time with changes in policy. These limitations do not, in the submission of this study, undermine the central finding that prosecutorial integration is the SFIO's most significant point of divergence from its counterparts. But they do counsel against treating the specific classifications in Table 6.1 as more precise than the underlying material permits.

CHAPTER

7

CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS

This concluding chapter draws together the conceptual, doctrinal, comparative, judicial and analytical strands of the study. It summarises the findings of Chapters 2 to 6, tests the hypothesis advanced in Chapter 1 against those findings, and offers specific suggestions and

recommendations for strengthening India's institutional framework for corporate fraud investigation.

7.1 Summary of Findings

Chapter 2 began by examining the meaning of fraud the Companies Act, 2013 and the recurring forms that corporate fraud takes in practice. It then traced the SFIO's origin to the Naresh Chandra Committee's recommendations, which were themselves a response to the same basic insight that had earlier produced the Roskill Report and the UK Serious Fraud Office: sophisticated corporate fraud requires specialised, multi-disciplinary investigative capacity. It found that the SFIO, unlike its English counterpart, was created first by executive resolution and given statutory form only about a decade later, and that its powers were assembled gradually and reactively in response to successive scandals.

Chapter 3 examined the statutory architecture of Sections 211 and 212 of the Companies Act, 2013, including the arrest powers made operational in 2017, and the foundational Adarsh Group and Bhushan Steel litigation. It found that the SFIO's coercive toolkit is now substantial, though surrounded by procedural safeguards, including a twin-condition bail standard, that are more elaborate than those applying to ordinary criminal arrests. It also found that the decision to prosecute rests with the Central Government under Section 212(14), rather than with the SFIO itself.

Chapter 4 turned to comparative material. It found that the United Kingdom merges investigation and prosecution in a single agency; that the United States divides the two functions between the SEC and the DOJ while coordinating them through standing structures; and that Australia allows ASIC to keep an independent civil enforcement track while referring only the criminal dimension of a matter to a separate prosecuting authority. Each system has experienced failures, but each has responded by reforming specific weaknesses within a clear institutional design.

Chapter 5 surveyed a range of matters testing the SFIO's powers in practice. It found that most litigation has concerned the procedural exercise of the agency's investigative and coercive powers rather than the substance of its fraud findings, that interventions against the SFIO have generally been narrow and temporary, and that no reported litigation has yet directly tested the SFIO's relationship to prosecution.

Chapter 6 formulated a five-element institutional effectiveness framework, covering investigative independence, coercive powers, prosecutorial integration, resource capacity and

accountability, and applied it comparatively across the four jurisdictions. It found that the SFIO shows a clear weakness on only one element, prosecutorial integration, while performing neutrally or favourably on most of the others. It identified the Australian model of a retained civil enforcement track alongside criminal referral as a more readily achievable reform than wholesale adoption of either the British or the American model, and showed that this conclusion fits the course of events in the Satyam and IL&FS matters.

7.2 Conclusion

On the evidence examined in this study, the Serious Fraud Investigation Office is a considerably more capable institution than a purely historical account of its slow, decade-long path to statutory recognition might suggest. Its investigative and coercive powers are now broadly comparable to those of its international counterparts. The body of case law testing those powers does not reveal an agency straining against inadequate legal tools. It reveals an agency whose procedural safeguards are, if anything, more elaborate than those found in comparable systems abroad.

What this study has shown is that the SFIO's real institutional gap lies elsewhere: in the absence of a settled, statutorily defined relationship between the end of its investigation and the start of an effective prosecution, and in the absence of any non-criminal route by which the agency can itself bring wrongdoers to account. Every comparator jurisdiction examined in this study has closed that gap through one design choice or another. The five-element framework developed in Chapter 6 is offered as one way of locating the gap precisely. The recommendations in this chapter, particularly the proposal to give the SFIO an independent civil enforcement track modelled on the Australian experience, are offered as a comparatively modest and achievable response to it.

If corporate governance failure is, as the introduction to this study suggested, largely a failure of institutions designed to hold power to account, then the institution India has built to investigate such failures deserves an equally careful accounting of where its own design still falls short. The SFIO has shown, in Satyam and in IL&FS, that it can find out what happened. The task now is to make sure that finding out leads, within a reasonable time, to consequences.

7.3 Suggestions and Recommendations

On the basis of the findings summarised above, this study offers the following suggestions and recommendations. They are grouped as legislative, institutional and judicial or procedural measures, although in practice they are closely connected.

7.3.1 Legislative Recommendations

1. Parliament should consider amending the Companies Act, 2013 to give the SFIO an independent civil enforcement power, modelled on ASIC's civil penalty jurisdiction in Australia. This would allow the agency to seek civil penalties, disgorgement of unlawful gains and director disqualification directly, using the evidence it has already gathered, rather than channelling its entire output into a single criminal complaint before a Special Court. Such proceedings could be brought before the NCLT, which already has jurisdiction over many corporate matters, with an appeal to the National Company Law Appellate Tribunal.
2. The Ministry of Corporate Affairs should consider whether a Deferred Prosecution Agreement mechanism, modelled on the UK Crime and Courts Act, 2013 framework examined in Chapter 4, could be introduced for corporate, as distinct from individual, liability under the Companies Act. Any such scheme should require judicial approval, full admission of the relevant facts, and robust remedial conditions, and should never be available to individuals. It would allow swifter financial and remedial resolution with companies while the prosecution of responsible individuals continues on its own timeline. The concerns raised in the American literature about the deterrent value of negotiated settlements should be taken seriously in designing any such scheme.
3. Consideration should be given to placing the SFIO's power to initiate investigations on a footing closer to the UK SFO's self-initiating discretion. The Director, SFIO could be empowered to accept a matter for investigation directly where it meets published acceptance criteria. The existing government-order mechanism should be retained for cases that fall outside the prescribed criteria. At a minimum, the decision on whether to initiate prosecution should be made within a fixed time limit to prevent completed investigations from being delayed indefinitely due to executive inaction.

7.3.2 Institutional Recommendations

1. The SFIO and the Ministry of Corporate Affairs should consider establishing a standing coordination mechanism with the CBI, the Enforcement Directorate, SEBI and the NFRA, modelled on the American Corporate Fraud Task Force examined in Chapter 4. The informal, case-by-case division of labour that characterised the Satyam prosecutions should be replaced with a standing structure, ideally with a statutory basis, capable of allocating overlapping charges without requiring a fresh ministerial direction in every future multi-agency matter.
2. The SFIO should be given a dedicated prosecution wing of its own, staffed by experienced prosecutors who are involved from the early stages of an investigation, so that evidence is gathered with the eventual trial in mind. This would import the most practically valuable feature of the Roskill model without requiring a complete institutional merger.
3. The Ministry of Corporate Affairs should publish systematic, anonymised data on SFIO investigation times, prosecution outcomes and resource allocation, of the kind this study found unavailable in comparable form across the four jurisdictions. This would allow the resource and technical capacity element of the framework proposed in Chapter 6 to be tested empirically in future research, and would strengthen public accountability.
4. Given the complexity of matters such as IL&FS, the SFIO's multi-disciplinary staffing model should be reviewed periodically to ensure that its forensic-accounting, data-analytics and information-technology capacity keeps pace with the growing sophistication of the financial structures used to hide large-scale fraud. Reducing reliance on short-term deputation, and offering specialist staff a stable career path within the agency, would help retain institutional memory.

7.3.3 Judicial and Procedural Recommendations

1. Special Courts constituted of the Companies Act should be encouraged, through appropriate case-management guidance, to prioritise SFIO-originated complaints, given the elaborate pre-filing scrutiny those complaints have already undergone. The appointment of judges with experience in commercial and financial matters, and the use of day-to-day hearings in major cases, would help reduce the long delays seen in the Satyam and IL&FS prosecutions.

2. Future litigation testing the SFIO's powers should, consistently with the pattern identified in Chapter 5, continue to distinguish clearly between challenges to the procedural exercise of the agency's powers and challenges to the substance of its findings. This would preserve the accountability benefits identified in Chapter 6 as a genuine strength of the Indian model, without allowing procedural challenges, or interim stays of the kind set aside in the Sahara matter, to become a means of indefinitely delaying substantively sound investigations and prosecutions.

7.4 Scope for Further Research

This study has been confined, by its own methodology, to a doctrinal and comparative analysis of statutory material, reported case law and secondary literature. Three lines of further research would extend it in useful directions.

1. An empirical study of SFIO investigation times and prosecution outcomes, carried out once the data recommended in Section 7.3.2 becomes available, could test the resource and technical capacity element of the framework quantitatively rather than qualitatively.
2. A closer study of how ASIC's civil enforcement track works in practice in Australia, including interviews with officials of ASIC and the Commonwealth Director of Public Prosecutions, could help refine the specific legislative design of the civil enforcement power this study recommends for the SFIO.
3. A comparative study extending beyond the United Kingdom, the United States and Australia to other jurisdictions that have recently reformed their fraud investigation architecture, such as Singapore's Commercial Affairs Department, could test whether the five-element framework proposed in this study holds across a wider range of institutional traditions.

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