



FORFEITURE OF ASSETS BY GOVERNMENT OR POLICE OFFICIAL

¹Deepali Jain

¹BBA LLB

Vivekananda Institute of Professional Studies, New Delhi, India

ABSTRACT- *This paper aims to put forward the information about assets in custody of the police and the government. It is often seen that the confiscated property by the police through own cognizance or by the permission of the concerned magistrate tends to be stolen or kept within the premises of the police station. The paper roads through various policies of confiscation in United Kingdom, Unites States or Queensland. However most precisely the paper enumerates various laws specifically civil procedural Code and Criminal Procedure code followed in India to protect the rights of the citizens over their confiscated assets. Various case studies have been mentioned to prove the point that despite numerous court warning, the listed sections to protect the rights; still there is no advancement seen in the procedural law for protection of confiscated property by the police or the government.*

Keywords: *Confiscation, civil law, criminal law, procedural law, government, seizure, forfeiture, judgment, claim.*

1. INTRODUCTION

“The more material we lose, the less we have. The less we have, the more we win.”

— Anthony Liccione

The object of criminal law is to determine the guilt or innocence of the accused and if the guilt is established, to prescribe the suitable action for that guilt on the basis of an elaborate system of substantive and procedural law. In the adversarial system, the trial is split into two fundamental parts. Once the court delivers the judgment of conviction, the second part that is, sentencing begins. The determination of the second issue that is to prescribe the suitable action is of critical importance and can scarcely be doubted. It determines how much the offender must suffer for his offence, and that suffering may include deprivation of liberty. Although sentencing comes at the end of the criminal process, but it is at the forefront of the accused mind from the very first point when he approached crime.

Some the in Indian law invariably results in illegal accumulation of considerable wealth by the concerned person which he will not be able to account for by any legal or other legitimate means. The wealth is accumulated in the form of immovable property or proprietary hold over business enterprises either in the offender's name or in the names of family members or others under his complete control. Unfettered enjoyment of this ill-gotten wealth by the criminal makes others despondent and loses confidence in the criminal justice system of the country. Therefore, an alternative penalty, which can be inflicted on criminals in addition to fine and imprisonment, is forfeiture of property i.e. to take from them the proceeds of their illegal activity and businesses which provided the economic base for their crimes.

1.1 Meaning Of Forfeiture

Forfeiture can be defined as 'the taking of property by the government without compensation as a consequence of the commission of some criminal act'. Scholars like Blackstone¹ justified the sentence of forfeiture on an assumed original compact between the subject and the state, in which the state safeguarded civil rights of the subject so long as the subject obeyed its laws. The ability of the government to forfeit property connected with criminal activity can be an effective law enforcement tool by reducing the incentive for illegal conduct.

2. LITERATURE REVIEW

1. **“The Effects of Asset Forfeiture on Policing: A Panel Approach” by Brian D. Kelly²** in his article he discussed Asset forfeiture has proven highly controversial in the United States since its expansion in 1984. Most controversial is the widespread policy that allows police agencies to keep the assets seized, which both proponents and critics assert changes police behavior. From newly developed panel data sets, we find some statistical support for the proposition that police agencies change the intensity and pattern of crime policing in response to forfeiture. However, in economic terms these effects are very weak and do not support the proposition that forfeiture provides vital funds and incentives for crime policing.
2. **“Asset Forfeiture and Police Priorities: The Impact of Program Design on Law Enforcement Activities” by Jason Hecker³** in his article examines the use of asset forfeiture by law enforcement units within the greater Cincinnati area, using the results of a survey distributed among state and local government law enforcement agencies. The analysis reveals what kinds of assets are confiscated, what kind of legal authority is used to accomplish asset forfeiture, and which individuals are involved in the decisions to confiscate assets and to select a particular kind of legal authority under which the forfeiture will be authorized. The data indicate that the use

¹Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. (Chicago: University of Chicago Press, 1979).

² Brian D. Kelly, “The Effects of Asset Forfeiture on Policing: A Panel Approach”, *Economic Inquiry*, 54 (2016).

³ Jason Hecker, “Asset Forfeiture and Police Priorities: The Impact of Program Design on Law Enforcement Activities”, 16 *Criminal Justice Policy Review*, 319-335 (2005).

of asset forfeiture does not have a substantial impact on the policing priorities of local agencies. The sampled jurisdictions tend to use either a criminal forfeiture statute as the legal authority for the seizure or a court-imposed settlement to confiscate assets. By using the criminal court process, jurisdictions avoid sharing the value of the assets.

3. “Are Drug Asset Forfeiture Laws Corrupting the Police” by Lisa Stolzenberg⁴ in her book describe the Despite the widespread belief among the public that drug asset forfeiture laws are corrupting the police, this study finds no credible evidence that the supplemental income the police procure from drug asset forfeiture seizures is influencing them to effectuate drug arrests that are ultimately determined by the judicial system to be legally questionable.

3. OBJECTIVES

- To study the Forfeiture and Seizure under Different Jurisdiction.
- To inform about various sections on confiscation of the assets.
- To put forward the question on display the question.
- To show the lack of rules followed.

4. HYPOTHESIS

- Forfeiture is confiscation of the asset of a person by government or police under a criminal act
- India is struggling to formalize procedural law
- Indian Government is behind in catching the criminal who stole the assets of its citizens.

5. RESEARCH QUESTIONS

The questions that emerged from the detailed analyses are:

1. If Queensland can have powers of police in respect to forfeiture why can't we?
2. Why there is no online portal for documentation of unclaimed property in Malkhana or in Supardari by court?
3. Despite courts repeated warning for taking action against unsynchronized procedural laws, legislation has not taken action?
4. Where is the police policy to scratch out the motor vehicles as commanded by the supreme court of India?
5. Why we need to find our rights to claim property in different tit-bits rather a collective act?
6. Since India is party to Unites Convention against corruption, why proper measures are not been taken by central government to dispose of the property?

⁴ Lisa Stolzenberg, *Are Drug Asset Forfeiture Laws Corrupting the Police*, (Weston Publishing, LLC, 2015).

7. Disposal of the confiscated property has detailed sections in criminal law, why is India Penal Code is left behind?

Hope justice would be served and our questions wouldn't be unfettered.

6. METHODOLOGY

The research methodology adopted by the researcher is a doctrinal form and the author has referred secondary sources in doing the research analysis.

7. ANALYSIS

7.1 Forfeiture and Seizure under Different Jurisdiction

In United Kingdom

In the UK, asset forfeiture proceedings are initiated under the Proceeds of Crime Act 2002⁵. These fall into various types. Firstly there are confiscation proceedings⁶. A confiscation order is a court order made in the Crown Court requiring a convicted defendant to pay a specified amount of money to the state by a specified date. Secondly, there are cash forfeiture proceedings, which take place (in England and Wales) in the Magistrates Court with a right of appeal to the Crown Court, having been brought by either the police or Customs. Thirdly, there are civil recovery proceedings that are brought by the National Crime Agency "NCA"⁷. Neither cash forfeiture proceedings nor proceedings for a civil recovery order require a prior criminal conviction.

In United States

There are two types of forfeiture (confiscation) cases, criminal and civil⁸. Approximately half of all forfeiture cases practiced today is civil⁹, although many of those are filed in parallel to a related criminal case. In **civil forfeiture**¹⁰ cases, the US Government sues the item of property, not the person; the owner is effectively a third-party claimant. The burden is on the Government to establish that the property is subject to forfeiture by a "preponderance of the evidence." If it is successful, the owner may yet prevail by establishing an "innocent owner" defense.

⁵ United Kingdom Crime Act 2002 as under *available at*: <https://www.legislation.gov.uk/ukpga/2002/29/contents> (Last Visited on August 8, 2020).

⁶ Part 3 of Crime Act 2002- Confiscating as under *available at*: <https://www.legislation.gov.uk/ukpga/2002/29/part/3> (Last Visited on August 8, 2020).

⁷ NCA and civil asset recovery *available at*: <https://www.brettwilson.co.uk/services/civil-fraud-and-litigation/civil-fraud/nca-and-civil-asset-recovery/> (Last Visited on August 8, 2020).

⁸ Types of forfeiture in US *available at*: <https://www.justice.gov/afp/types-federal-forfeiture>

⁹ Civil Forfeiture statistics *available at*: <https://ij.org/report/policing-for-profit/>

¹⁰ Civil Forfeiture in US *available at*: https://www.unafei.or.jp/publications/pdf/RS_No83/No83_06VE_Weld1.pdf

In Queensland, Australia

Under section 622 of the Police Powers and Responsibilities Act 2000,¹¹ if a police officer seizes property the officer must, as soon as is reasonably practicable, provide a receipt (commonly known as a 'field property receipt') to the person who the thing was seized from. The property receipt must describe the thing seized. If the person is not present at the time, the police officer must leave a property receipt in a noticeable place.

In India

It is saddening to quote that like others India indeed is still struggling to formalize a proper procedural law in order to seize and maintain offenders or general public property. Despite various big names cases of stolen property from India example- kingfisher case, Vijay Malay's case, Vodafone holding, Inc. India has not been able to catch up with the need of today. In recent meeting between the central government the prime minister talks about the " fugitive offender's bill 2017" it is at follow:

The Fugitive Offenders Bill 2017¹²

A Bill to provide for measures to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian courts, thereby preserving the sanctity of the rule of law in India.

The Narendra Modi government plans to enact a law under which any property owned by fugitive economic offenders involving amounts in excess of Rs100 crore could be confiscated and vested with the government for expeditious disposal.

The law is expected to deter economic offenders from fleeing the country like Vijay Mallya did.

The finance ministry listed several reasons why the government has to act against such fugitives. "First, it hampers investigation in criminal cases; second, it wastes precious time of courts of law, third, it undermines the rule of law in India. Further, several such cases of economic offences involve non-repayment of bank loans, thereby causing strain on the banking sector in India," it said in a statement.

The bill starts with rules wherein the director or any general director could report to the court declaring a person fugitive offender. Further he can appoint himself or another person to attach property for not more than 180 days.

¹¹ Section 622 – police powers and responsibility act *available at:*
http://classic.austlii.edu.au/au/legis/qld/consol_act/ppara2000365/s622.html

¹² Fugitive offender's bill 2017: *available at:*
<https://dea.gov.in/sites/default/files/Draft%20Fugitive%20Economic%20Offenders%20Bill%2C%202017-22.3.2017.pdf> (Last Visited on August 8, 2020).

Notice must also be issued to any other person who has any interest in the property mentioned in the application under Section 6.

Disposal of confiscated property¹³

1. The administrator will be responsible for the disposal of the confiscated property.
2. The administrator will hear the claims in relation to the confiscated property, in the manner as may be prescribed, and prepare a final list of creditors.
3. The confiscated property will be used to satisfy the claims of the creditors in the final list.
4. In cases where any confiscated property is the subject matter of proceedings under the Insolvency and Bankruptcy Code, 2016, the administrator will follow the priority prescribed under the said Code for the satisfaction of claims under this section.
5. In cases where any confiscated property is the subject matter of proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 or the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the administrator will follow the priority prescribed under the said Acts for the satisfaction of claims under this section.

Above mentioned is a glimpse of how the property seized by government is taken and how the same is protected. Now we will dig into various India acts wherein the powers and procedure to safeguard the seized property in mentioned.

7.2 Judgment

*Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property*¹⁴.

Facts: Short question requiring consideration in this appeal is whether wife whose husbands property is ordered to be forfeited under the Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the SAFEMA) is entitled to file an appeal as person aggrieved under Section 12(4) of the Act?

Court Observation “We cannot turn our eyes to the fact that because of mad race of becoming rich and acquiring properties overnight or because of ostentatious or vulgar show of wealth by few or because of change of environment in the society by adoption of materialistic approach, cancerous growth of corruption and illegal gains or profits has affected the moral standards of the people and all forms of governmental administration. It is to be mentioned that under the *Indian Penal Code*, 1860 various punishments are provided in Section 53 which include forfeiture of property and

¹³ the fugitive offender’s bill available at:

<https://dea.gov.in/sites/default/files/Draft%20Fugitive%20Economic%20Offenders%20Bill%2C%202017-22.3.2017.pdf> (Last Visited on August 8, 2020).

¹⁴ (2001) 5 SCC 755

Sections 61¹⁵ and 62 provided sentence of forfeiture of property. However, the Indian Penal Code (Amendment) Act, 1921, deleted Sections 61 and 62¹⁶. But considering the situation prevailing in the society, it appears that the said provisions are required to be re-introduced so as to have deterrent effect on those who are bent upon to accumulate wealth at the cost of the society by misusing their post or power. We hope that the Legislature would consider this aspect appropriately.

Court Held: Before parting with the judgment, court observed that it is difficult to comprehend the reason for not including a person who is convicted under the Prevention of Corruption Act, 1988 in the definition of Section 2(2)(c) of the Act. It appears that for controlling the cancerous growth of corruption apart from further deterrent provisions, illegally acquired properties by means of corrupt practices could be forfeited under the provisions by suitable amendment in the Act. The appeal stood dismissed.

*Sunderbai Ambalal Desai Vs. State of Gujarath*¹⁷,

Facts: his Criminal Petition is filed by the petitioner, under Section 482 of Cr.P.C., with a prayer to direct the Station House Officer, Jangaon P.S., Warangal District, to forthwith release Auto bearing registration No.AP 36X 7037 seized in connection with Crime No.295 of 2011 registered under Section 7(A) read with 8(e) of the A.P. Prohibition Act.

Learned counsel for the petitioner has submitted that the petitioner is owner of the vehicle and since the date of seizure, it is in the custody of the police and if it is exposed to sun and rain, there is every likelihood of the vehicle being spoiled, and that the petitioner will give an undertaking that he will not alienate the vehicle and change its features and he will produce the vehicle as and when directed by the Court.

Held: The Apex Court has laid down that in case of vehicles seized during investigation, they should not be allowed to deteriorate by being kept unused and unattended in the premises of the police stations. Therefore, the vehicle has to be entrusted to the interim custody of the petitioner subject to appropriate conditions.

Succinctly explained the object and scheme of the various provisions of the Code as to disposal of case property. The Hon'ble Supreme Court, in the above case, observed as follows:

“The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary.”

¹⁵ Section 61 of Indian penal code available at: <https://indiankanoon.org/doc/1173866/>(Last Visited on August 8, 2020).

¹⁶ Section 62 of Indian penal code available at: <https://devgan.in/ipc/section/62/> (Last Visited on August 8, 2020).

¹⁷ 2002 10 SCC 283

In view of the ratio-laid down by the Hon'ble Apex Court, it is clear that unless the case- property is absolutely necessary, court cannot retain the case property either in the custody of court or in the custody of police for any time longer. Therefore, it is the duty of court to pass appropriate property orders according to law without any delay.

Delhi Development Authority v. Skipper Construction Co. Ltd¹⁸

Facts: A plot of land was put to auction by the Delhi Development Authority [D.D.A.] in October 1980. Skipper Construction Company [Skipper] offered the highest bid in a sum of Rs. 9.82 crores. It was supposed to be a record bid at that time. According to the conditions of auction, twenty five percent of the amounts were payable immediately and the rest within ninety days. Skipper deposited the twenty five percent but did not deposit the balance. It asked for extension repeatedly and it was granted repeatedly. As many as seven extensions were granted spread over the period January, 1981 to April, 1982. Since Skipper failed to deposit the balance consideration even within the last extended period, proceedings were taken for cancelling the bid. Skipper went to Court and on May 29, 1992 obtained stay of cancellation. D.D.A. applied for vacating the stay. Nothing happened but usual adjournments. Skipper was simultaneously making representations to D.D.A. to give him further time. In January 1983, D.D.A. constituted a committee to consider the request of Skipper and other similar requests and to devise a formula for ensuring timely payments by such purchasers.

Held: That a law providing for forfeiture of properties acquired by holders of public offices by indulging in corrupt and illegal acts and deals is a crying necessity in the present state of society. The Court urged the Parliament to enact a law for the purpose of forfeiture if they really mean business. Pursuant to this judgment the Law Commission of India in the year 1999, in its 166th report suggested enactment of a law for forfeiture of property of corrupt public servants and also drafted a Bill titled 'The Corrupt Public Servants (Forfeiture of Property)' which was annexed to the report. The Report is pending consideration of the Government since then. Subsequently, in 2008 an amendment was proposed in the Prevention of Corruption Act, 1988 by inserting a new chapter IVA in order to make the forfeiture laws effective. These proposed amendments were narrower than those recommended by the Commission. However, the irony of situation is that neither the report of 1999 nor the amendments proposed in 2008 have seen the light of the day.

8. CONCLUSION

To sum up, it can be said that seizure and confiscation is a complex and difficult exercise. The object of criminal law is to determine the guilt or innocence of the accused and if guilt is established, to prescribe the suitable action for that guilt on the basis of an elaborate system of substantive and procedural law. Confiscation is that stage of criminal justice system where the actual punishment of the convict is decided by the judge. However disposal decisions have a highly symbolic impact on the society as they represent the governmental as well as the societal anguish towards that form of

¹⁸ 1996 AIR 2005, 1996 SCC (4) 622

crime. It is said that ‘If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella’s illegitimate baby’.

In order to bring consistency, clarity and uniformity in sentencing, the sentencing system of other jurisdictions like U.S.A. and U.K. have been explored. These countries in order to bring consistency in sentencing have developed sentencing guidelines. U.S.A. has developed numerical guidelines where as U.K. has narrative guidelines. These guidelines although not binding on the courts in India can act as guiding star for the judges while exercising discretion.

BIBLIOGRAPHY

Authors:

1. Blackstone, William. *Commentaries on the Laws of England: A Facsimile of the First Edition of 1765--1769*. (Chicago: University of Chicago Press, 1979).
2. Brian D. Kelly, “The Effects of Asset Forfeiture on Policing: A Panel Approach”, *Economic Inquiry*, 54 (2016).
3. Jason Hecker, “Asset Forfeiture and Police Priorities: The Impact of Program Design on Law Enforcement Activities”, 16 *Criminal Justice Policy Review*, 319-335 (2005).
4. Lisa Stolzenberg, *Are Drug Asset Forfeiture Laws Corrupting the Police*, (Weston Publishing, LLC, 2015).

Cases Laws:

1. *Delhi Development Authority v. Skipper Construction Co. Ltd* 1996 AIR 2005, 1996 SCC (4) 622
2. *Shobha Suresh Jumani v. Appellate Tribunal, Forfeited Property* (2001) 5 SCC 755
3. *Sunderbai Ambalal Desai Vs. State of Gujarath* (2002) 10 SCC 283

Acts:

1. Crime Act 2002
2. Smugglers And Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976
3. United Kingdom Crime Act 2002

Websites:

1. <https://dea.gov.in/sites/default/files/Draft%20Fugitive%20Economic%20Offenders%20Bill%2C%202017-22.3.2017.pdf>
2. <https://ij.org/report/policing-for-profit/>
3. <https://indiankanoon.org/doc/1173866/>
4. <https://www.justice.gov/afp/types-federal-forfeiture>
5. <https://www.legislation.gov.uk/ukpga/2002/29/contents>
6. <https://www.legislation.gov.uk/ukpga/2002/29/part/3>
7. https://www.unafei.or.jp/publications/pdf/RS_No83/No83_06VE_Weld1.pdf
8. https://www.unafei.or.jp/publications/pdf/RS_No83/No83_06VE_Weld1.pdf