

MANAGEMENT OF CONFISCATED VEHICLES AND ITS DISPOSAL: A GLOBAL PERSPECTIVE

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ABSTRACT

The piled stock of junk vehicles are becoming a treat to many economies as it is connected with rules and regulations, court procedures, maintenance etc. This paper attempts to do a review analysis of different studies on confiscated vehicles. Many studies proved that vehicle confiscation is effective while working to reduce recidivism or criminal attempts. Confiscation of vehicle is effective in reducing the chance of making an income through illegal measures.

Key words: sustainable transportation, confiscation of vehicles, End of life vehicles.

Introduction

Vehicles under the custody of police are a problem that does not end up with a single solution as the court procedure needs much time to tackle. Lack of dumping or storage facility forces them to leave the vehicles exposed to all weather conditions. Once a vehicle is seized, it must be treated well, stored in good condition, proper maintenance should be ensured Tahir (2015). The confiscated or seized vehicles are facing a big challenge as it depends on rules and regulations, inadequate storage facilities, frequent check-ups for maintenance works, setting up of a limited time frame to settle the issue by courts (Neendur Asha 2022). This paper attempts to do a review analysis of different studies on confiscated vehicles.

Many studies proved that vehicle confiscation is effective while working to reduce recidivism or criminal attempts. The vehicle seizure reduces the chance of getting profit from the criminal offence. It may curb all chance to finance further crime. The society may get a strong message that crimes not benefiting. The public may get utility by demonstrating such actions. While on the other hand their lack measures to keep these vehicles without reducing its economic utility, Tahir (2015).

The national audit department of Malaysia had pointed out many problems in the issue of seized vehicles. They are the inadequate management of seized vehicles, delay in official procedures, lack of maintenance records and registers, inadequate storage facility all promote the fast decay of vehicles under custody. Long and slow legal actions and court procedures are acting as a major reason for the existing stock of seized vehicles. (Tahir (2015). The Organisation for Economic Co-operation and Development (OECD) (2018) had put forward a suggestion to avoid the wastages of resources that allowing the owner to retain them during the time of legal procedures and guaranteeing payment of the value of these vehicles after settling the legal formalities. The history of asset forfeiture is more related to British common law. (Neendur Asha, (2022)

Hedman (2010) finds that the Britian had first to enact their Navigation Act in 1660 for confiscate vessels and vehicles that stand against rules and navigation act. Britian tried to hold these vessels and vehicles with their language. Krane (2010) had expressed the opinion that a state can reduce the illegal actions and even earn a reasonable income and profit from confiscation. (Worrall, 2001) also expressed the same view that the proceeds of crime or any type of profit earned from crime or illegal actions shall be confiscated by the government to give the society a message that crimes do not earn profits. Hedman (2010) had also opined that the confiscation of assets is good measure to curb all forms of evil actions and at the same time the government can earn more income without introducing fiscal measures. Paying incentives to the officials for confiscating an asset that contains a huge value may work in a positive way in controlling crimes (Neendur Asha 2022). Many countries provide lessons and training to drivers and owners of vehicles to inculcate a decent transportation culture especially among the young generations. The renovation of transportation infrastructure is of high demand for having development.

The government can go for confiscation of assets if the owner of the assets is performing actins against state interest for against humanity. (Kar & Datta, 2009) had stated the law in England on asset forfeiture to control illegal actions. This kind of confiscation is conducted in early times purely based on religious beliefs and was called 'deodand', later in 1846 the 'deodand' system was abolished in England as it was purely based on religious grounds. The Royal British crown tried to limit the transfer of proceeds of crime as heredity and it was taken by the state. (Kar & Datta, 2009) had pointed out the reasons for high rate of fatality on roads as over speed, inadequate road infrastructure, poor knowledge in transportation and poor law enforcement etc. (Levi & Osofsky, 1995). The forfeiture of vehicles is a good measure to control crimes as it give a message to all that crimes may not give profits.

(Neendur Asha, (2022) states the need for the proper maintains of confiscated property as in some cases it had to be return to its owner after closing the court procedures or it can be used for social reuse purposes. The maintains of confiscated vehicle involve high cost as it require skilled labouers and proper storage facilities. There is a chance to reuse these confiscated vehicles. Caggiano and De Rosa (2015) had stated that there is a scope for the study of post seizure mechanism and the government can sanction the reuse of confiscated vehicles for social purposes through proper channels. The forfeiture of assets can be used to pay compensation to the victims of crime and also to fight against crime. (Neendur Asha 2022).

Rizzoli (2014) studied about the working of mafia system in detailed. Mafia system is working as an organized manner through violence backed by political power and exploitation. The illegal predation is working in a strong manner due to the existence of mafia system. It has socio-political and economic power to support crimes and illegalities. The controlling of mafia system is effective through confiscation and reuse of assets as an immediate effect (Neendur Asha,(2022).

(Neendur Asha,(2022) the legitimate economic system is getting polluted by the working of mafia. The governments tries to control these illegal working of mafias through forfeiture and reuse of assets. There is a scope for re utilization or recycling of assets made from illegal deeds. (Rizzoli, 2014),pointed out that “In Italy, the seizure is mandatory for certain crimes like mafia association, offences like drug trafficking, corruption etc. The judiciary punishes both the leader as well as the accomplices. This kind of asset seizure is proved to be effective in the fight against mafia. These confiscated assets especially the movable assets are either sold or rented out. Many seized vehicles having economic value had given to public offices like the police force, fire-fighters and forest guards etc. The two forms of property are forfeitures are personal property and real property. The first category consists of all movable items as money, clothing and vehicles. Real property is nothing but the wealthy forms that are not movable, example houses, building and land etc”.

Confiscation of assets of mafia or those involved in crime may impart a message that the earnings from crime do not last long or won't work. The impaired driving is proved to be effectively controlled through confiscation of vehicles. The different forms of vehicle sanctions are also effective in controlling traffic illegalities. The different types of vehicle sanctions are also helpful to reduce repeat offenders by 39 percent (Antoniy et. all 2015). The asset forfeiture also help to re inject the value of money to the legitimate economic system and also work as a means to find fund for law enforcement ensuring the optimum resource utilisation (Antoniy et. all 2015).

The European Union and the member countries especially Bulgaria, Italy and Romania had following a well-designed asset recovery procedures and Office to enhance the transparency of effective asset confiscation of illegal matters. The European union also had formulated many research programmes and scholarships on the “prevention and fight against crime” to have effective and efficient forfeiture policies in Europe (Antoniy et. all 2015).

The European Union-sponsored research is intended to understand the problems and strength in existing asset confiscation practices in especially three countries, Italy, Bulgaria, and Romania. The main purpose of the research and development is to ensure the exchange of know-how and the exchange of best practices, and bring integrity, transparency, accountability, and management of human resources etc. to ensure a cost effective asset forfeiture programme (Antoniy et. all 2015).

3.1. Bulgarian Model

Bulgaria had framed a strong legal background in handling the illegally acquired assets. Through historical stages the legal set up of Bulgaria was developed. The main purpose of forfeiture is to give punishment. Bulgaria enacted the criminal code in the year 1982. Under the criminal code 1982, the proceeds of crime are subject to forfeiture and there exist no scope

for the return or reimbursement of confiscated assets. The next change happened in 1989 with the emergence of the new economic and political relations. The increase number of organized crimes through the mafia expansion beyond the national boundaries had led to the formation of an additional mechanism to counteract the crime. Strict confiscation and forfeiture laws came into being in the year 2005. another act of the forfeiture of illegal asset act of 2012 introduced and framed a state agency known as ‘the commission for illegal asset forfeiture’. A specialized permanent set up of commission consisting of five members. The commission can forfeiture any type of illegal proceeds including the money, movable and immovable assets etc (Antoni et. all 2015).

The commission has to follow five steps doing in asset forfeiture. The first step is known as an administrative step having the duty of tracing and finding out those assets from crimes. The second step is judicial procedure. The main aim is to prove the illegality and ensuring the worthiness of being seized. The third step is of actual seizing or forfeiture. The final step is of management and disposal of the seized assets. The final forfeiture will take place as per the settlement made by the court (Antoni et. all 2015).

“The management and disposal of frozen assets will do as per the rules and regulations put forward by the forfeiture of illegal assets act of article 81-86. The main objective of these activities is to preserve the economic utility and value of the seized assets” (Antoni et. all 2015). The easily perishable products that are confiscated are advised to en-cash. There are the court appointed safe-keepers to the seized durable assets (Antoni et. all 2015).

Any forfeited item that needed special care and attention as per article 83 of foundation for inter- national arbitration advocacy, FIAA is advocated to appoint special officers and the cost of it may beard by Commission for Illegal Asset Forfeiture (CIAF). The duty of management of forfeiture assets is vested on special authority known as the interdepartmental board for forfeiture asset management. There are 5 deputy ministers of justice, finance, economy, energy and tourism in this special authority. The main purpose of formation of this board is to ensure the management of the forfeited assets. The Board also renders the decisions regarding the possession or control reuse of the seized property. “The civil forfeiture model of Bulgaria is capable of institutions which are designed to react faster, flexible to impose the interim measures and better safekeeping measures for the conservation of all confiscated assets” (Antoni et. all 2015).

3.2 Italian Model

There is a blending of both traditional as well as modern methods of confiscation in Italian model. We can see continuous amendments and progressive changes in the Italian legal frame work. The First phase of law introduced in the year 1982 known as “law Rognoni-La Tora”. This law advocated the confiscation of economic profit. Another law was framed in the year 1992 to control the working of criminal mafia-type organisations. In the year 1996 a new law was enacted to control and regulate seized assets. The Italian government also in favour of and permitted the social re-use of forfeiture resources for collective purposes. In the year 2008 a new extension of the law of precautionary seizure and confiscation was introduced and framed a specific body for the management of confiscated assets in the year 2010. In the year 2011 an anti-mafia code was introduced and also enacted the stability law in 2013 to regulate the other provisions on confiscation. They had set up a national agency intended for the management of

seized assets. They also appointed a judicial administrator to confiscate and preserve the assets and also to increase the productivity of these assets. They also recommended the sale of seized assets and the amount should be deposited to the “justice unique fund”. The Italian model is flexible, and based on a strong ethical value system, and all the asset recovery officials are completely politically independent. More efficient, ethically strong, a better-centralized system of confiscation is the peculiarities of the Italian model. The Italian model advocated the use of confiscated assets for social reuse (Antoni et. al 2015).

3.3 Romanian Model

Romania is also having a very strong legal background on the issue of the forfeiture of assets. The criminal code of Romania, code of criminal procedures, the fiscal procedure code etc. are some important laws. “The national law on regulations of extended confiscation was introduced in the year 2012 as law number 63/2012 and the modification and completion of the existing criminal code by law number 286/2009” (Antoni et. al 2015). The Romanian model works on an extended confiscation of illegal assets especially from criminal offences. The confiscation was carried out by Ministry of Economy and finance and the value of the assets shall deposit to a separate account which can be included in the state budget. A special officer known as ‘Bailiff’ is carried out the procedure of confiscation by a court order. The Bailiff has to file a request to grant permission for seizure and the court must decide the case within a time span of 7 days of the file submission. Through the help of Romanian police the confiscation can be prosecuted. The collection of information on illegal deeds, economic crime, corruption, and also about the organized crimes are done by the police. There is a provision for each institution to appoint a person-in-charge of forfeiture through a court order. After the first stage of identifying the asset to confiscate they had to follow three steps in asset seizure. To get a trial order to establish the forfeiture of assets is the first step, the forfeiture of illegal assets is the second and the third is the management and disposition of the seized assets.. The final stage of disposal of the seized asset are done and those assets that are subject to natural decay is entitled to the sale of those items through court order (Antoni et. al 2015).

Despite any strong empirical evidence on the relationship between crime and asset-focused law enforcement or interventions, it is highly popular and defensible due to the general perception. Based on this general moral support the asset-based interventions remain as the most useful tactic for law enforcement (Atkinson et al., 2017).

The U.K government also using the following tactics to enforce law and reduce recidivism. They used to seize of cash, detention and forfeiture of financial assets, confiscation of proceeds of crime through civil recovery, seizure and removal of the property including vehicles. The main objective is to share experience on the management, use and disposal of frozen, seized and confiscated assets, and to identify best practices as necessary, building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue. In 2014, a meeting of the expert working group was convened to discuss the management and disposal of seized assets and identify the best practices in that field (Atkinson et al., 2017). Dumping of construction and demolition waste on open areas or roadsides is punishable since it causes soil pollution. In the year 2006 Israeli government enacted a punishment of vehicle impoundment for curbing the illegal dumping of waste. The

analysis of the effectiveness of the vehicle impoundment punishment on this particular act shows that illegal dumping has decreased (Seror et al., 2014).

Conclusion

This paper analysed the different reviews on management of confiscated vehicles and confiscated properties in different countries. Many studies prove that the actions taken to confiscate vehicles surely helpful in reducing crime, but a proper management and disposal policy of seized vehicles is a must for achieving sustainable development. Many studies proved that vehicle confiscation is effective while working to reduce recidivism or criminal attempts. The vehicle seizure reduces the chance of getting profit from the criminal offence. It may curb all chance to finance further crime.

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