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POLICY SUGGESTIONS GIVEN BY EUROPEAN UNION ON CONFISCATED ASSETS-AN OVERVIEW

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ABSTRACT

European Union has adopted certain framework decisions regarding co-operation between the asset recovery offices of the member countries on handling confiscation of crime-related properties. It asked the member countries to set up a national asset recovery office and made a judiciary authority which should be highly competent in dealing with confiscation or forfeiture of proceeds of crime thereby, curb the working of Mafia system or criminal deeds. They have put forward programmes to compensate the crime victims and promote social re- use of the criminal assets and even used for funding the asset recovery programmes. This paper tries to give an overview on the legal and institutional frame work given by European Union. The policy suggestions are helpful to frame policies for countries on their way to sustainable development.

KEY WORDS: *Confiscated Assets, Asset Recovery, Vehicle Impoundment, Safe Disposal of Obsolete Vehicles*

INTRODUCTION

European Union issued certain frameworks to guide the member countries to establish a well-structured legal and institutional framework on different issues. On 6th December 2007, the European Union has adopted certain framework decisions regarding co-operation between the asset recovery offices of the member countries on handling confiscation of crime-related properties. It asked the member countries to set up a national asset recovery office and made a judiciary authority which should be highly competent in dealing with confiscation or forfeiture of proceeds of crime thereby, curb the working of Mafia system or criminal deeds. They have put forward programmes to compensate the crime victims and promote social re- use of the criminal assets and even used for funding the asset recovery programmes. The main aim of these programmes is the restoration of confidence in law (Working Group on Asset Recovery Vienna, 2017).

The European Union directed the countries to set up for the appraisal of the present value of the asset, especially in the case of movable assets. It recommended retaining the vehicle under the custody of the owner or possessor. They also recommended the maintenance of the vehicle to keep the good condition or economic worthiness, and insisted regular monitoring and inspection by the police department and controlled the transferring or sale of the vehicle, whenever a pre- seizure plan is issued.(Neendur Asha 2022)

After the actual seizing done the seized money should be deposited in a separate account under the control of a special manager appointed by the court. The Union direct the countries that confiscated assets should be taken out and kept under the safe custody and management of law enforcement agency. A court-appointed official is responsible to take custody and management of the asset on account of the rules and regulations (Working Group on Asset Recovery Vienna, 2017).The main views are discussed below

1.Handling of Perishable assets: The perishable goods are those goods which loose utility if not sold, within the economic life span of these goods. These include items of fuel, building materials, Chemicals, scrap, or animals. Countries like Thailand, Canada, Czech Republic, Peru, Brazil, Tanzania and Honduras allow the interim sale of those goods which are highly perishable. But in Costa Rica, the asset management office is responsible to sell otherwise donate if it is not possible within a short period can destroy those easily perishable goods (Working Group on Asset Recovery Vienna, 2017).

2.Handling of rapidly depreciating property: In Canada, the handling of fast depreciating property is itself confusing. In some Canadian provinces vehicles are treated as rapidly depreciating assets while in some other provinces of Canada vehicles are not treated as in this group so they used to store till the trial over. If there exists a high risk of deterioration or depreciation Costa Rica allows the pre-confiscation sale of the assets including vehicles conveyances, animals foodstuffs etc. The Czech Republic permits the sale of those assets which are highly perishable or the cost of storing and management is greater than their value or those assets demands special care. These assets can be sold without the approval from the owner. Thailand and Brazil also permit the interim sale of those assets having the risk of deteriorating value (Working Group on Asset Recovery Vienna, 2017).

3. The interim use of assets under pending trails.: The interim use of the asset is one of the productive ways of dealing with the assets where the interim sale is not possible. The interim use of assets is not widely considered due to the risk of deterioration of the value of assets and the natural depreciation while using. When the judicial procedure over and the court orders the return of the assets, the interim use is not worthy to follow and it is against the fundamental right of the legitimate owner. Some countries promote the interim use of confiscated asset only when the recipient institution or the company guarantee the return of asset in a good condition. When the interim uses of assets are allowed the rightful owner is forced to deposit for future loss in the value of confiscated assets. The country like Costa Rica allows the interim use of assets for social purposes. The threat of depreciation while interim use can be covered by insurance or demanding a deposit for meeting the value that depreciated or to provide compensation for the reduction in value (Working Group on Asset Recovery Vienna, 2017).

The European Union provides three alternative options regarding the interim use of confiscated properties as “contracting”, “provisional storage” and “provisional destination”. “Contracting” means the interim use of a seized asset is permitted based on the contract between the manager and the user. The terms and conditions may vary according to the nature of the product and it ensures the efficient management of such assets. Under “Provisional storage” the court may appoint an officer in charge of safekeeping the assets and must ensure the economic utility of those assets. Under “provisional destination” the recipient will be responsible for any kind of damage or reduction in the value of assets. These assets need to cover insurance or bank security of overall risks. In Peru, the confiscated assets are given only to fight against crime or social reuse for interim use. Every country gives importance to the safety of the public and its environment. The countries are aware of the threat of hazardous property and its transaction. So the countries made provision for the safe disposal of these hazardous substances (Working Group on Asset Recovery Vienna, 2017).

The main types of reuse possibilities

The major types of asset reuse possibilities are as follows;

1.The direct reuse: the state confiscated the asset can be allotted for disposal based on a formal request from eligible beneficiaries. The confiscated assets are directly transferred for social reuse. This type of social reuse is seen in Belgium and Italy (Costantino, 2014).

2.The Indirect reuse: The proceeds from the confiscated assets are deposited in a special account and the proceeds from this account are utilising for fighting drug trafficking or crime prevention. This model is currently implemented in a few E.U countries, which are Luxembourg, France, Spain and the U.K (Costantino, 2014).

3.Problem of abandoned properties : Most countries face the problem of abandoned properties. It represents mainly two important challenges. If the seized property gets the order for final confiscation after a long period the owner may not able to pay the storage fees and maintenance fees which may out pass the property value then. If the authorities failed to identify the owner then that property may fall under the category of abandoned, the same may happen if the judicial trails take much time. On the other hand, if the owner of that property is known within no time they can undertake the steps for disposal and thus avoid the unnecessary storage and maintenance and reaching the earlier end of life of that property (Working Group on Asset Recovery Vienna, 2017). Some countries like Costa Rica has set a

prescribed time limit for claiming the ownership of the property after that limit if no claim on the property will undergo the disposal or safe destruction the disposal of abandoned property. The asset forfeiture code in Colombia is responsible for the disposal of abandoned assets. As per this code if no person claims the ownership of this property within 3 years for vehicles and within five years for real estate is available for the civil procedure to undertake the ownership by the government. But in some countries, the time for claiming the property is only 30 days, after that the property is declared as abandoned (Working Group on Asset Recovery Vienna, 2017).

There are two types of confiscation orders exist as value-based confiscation and another one is asset-based confiscation. Both types of confiscation exist in South Africa. Under the asset-based confiscation, the executing authority can either sell or retain the property. In France, the government can decide on the reuse of confiscated property for government functioning. The confiscated vehicles are being utilised by the law enforcement agency, police, customs, other judicial officials etc. The property is only transferred to the private sector if no government departments need it. This type of transfer happens through sale by calling tender or transfer to a beneficiary at free of cost under certain special circumstances. rental or gratuitous use is also possible for up to a maximum of 8 years (Working Group on Asset Recovery Vienna, 2017).

Abandonment of boats also makes problems as it adds to pollution and also reduces the beauty of the sight. Despite an eyesore, the abandoned boats in decaying conditions are harmful to human health and also safety. The aesthetic and other environmental impacts depend on the size of boats and the location Compulsory registration, dissemination of information regarding the safe disposal of obsolete boats and formulation of new agencies or legislation for the safe disposal of conveyances are some measures to solve this problem (Turner & Rees, 2016).

The number of abandoned vehicles in England has recorded fast growth. In the year 2001/2002 around 2,90,000 vehicles were reported as abandoned. The decline in the price of scrap metal, lack of stringent vehicle licensing and registration, increase in the pool of second-hand vehicles and cost of transportation etc. works for the intensification of the problem of the abandoned vehicle. The adoption of End of life vehicle directives also pushes the number of abandoned vehicles as it increases the legitimate cost of vehicle disposal (Smith et al., 2004).

The vehicle impoundment as a tool to regulate and curb traffic offence is effective while analysing the impact of vehicle sanction on Israel (Rosenbloom & Eldror, 2015). “Specifically, drivers whose vehicle was impounded were less likely to commit traffic violations in the following year than drivers subjected to other sanctions. The results are explained according to psychological behavioural theories of punishment effectiveness. These findings provide further support for impoundment as a deterrent for several traffic-violations” (Rosenbloom & Eldror, 2015). The vehicle impoundment program in Franklin County (Columbus), Ohio, proved a significant reduction in reduced driving-under-the-influence (DUI) recidivism rates for multiple DUI offenders (Voas et al., 1998).

One way to fight against crime is the confiscation of the proceeds of crime, especially from organised crime. European Union had adopted one of the main objectives to follow vehicle sanctions are to fight against crime and confiscate the assets accumulated by way of criminal organisations. The social re-use of illegally obtained assets channelizes these resources to a legitimate system having high dignity. The confiscation system plans to collect the earnings by the criminal organizations. Many recognised the need for a common practice for the social re- use of confiscated properties among the European Union. Identifying the best practices also help other countries to follow the same (Costantino, 2014).

In the process of asset recovery and social use, the first step is confiscation. The various phases of asset disposal and social reuse are as follows.

1. The pre-investigative phase – collecting information.
2. The investigative phase-identifying the asset to be confiscated
3. The judicial phase-decides the confiscation.
4. The Disposal phase-The sate decides the disposal and social reuse.

The intension for the social re-use of confiscated asset is to pass a message that crimes do not provide profit. The social re-use is applied in the case of the larger value of assets confiscated. The criminals under organised crime used to invest the profits from crime on vehicles, business, real estate, shares etc. (Costantino, 2014).

The abandoned vehicles are responsible for generating more problems like problems of motor vehicle regulations, contributing the illegal waste disposal, problems of social disorder etc. Due to the lack of the number of plates or any kind of owner identification, it is very difficult for finding out the owners. Abandoned vehicles attract many illegal activities like theft, drug trading, a shelter for animals etc. An abandoned vehicle also promotes environment pollution as vehicles contain hazardous chemicals and gasoline and other poisonous fluids. As an abandoned vehicle means a junk vehicle dumped on roadsides or any public places for a long period (Browse, 1987).

A vehicle is identified as abandoned by considering the factors like the appearance of the vehicle, damages in the vehicle body, bad condition of doors, flat tires, missing of major parts, broken windows, garbage or growth of plants or trees inside vehicles, signs of longer periods of abandonment, no or false number plates etc. Abandoned vehicle forms a threat to life as they represent decay and disorder attracting illegal activities and problems of environmental sustainability. The disposal of anyone obsolete vehicle in a public place also attracts the disposal of other obsolete vehicles and waste dumping (Browse, 1987).

4. The leading factors of vehicle abandonment: The major factors responsible for abandonments of a vehicle are classified into two. One is the increasing cost of operating and disposing of obsolete or least economic valued vehicles and the second one is the fear of the impact of vehicle licensing procedures and vehicle regulations (Browse, 1987).
5.The Cost of management and Disposal of Vehicles: If the scrap value of junk vehicle is very less may result in a greater abandonment. The legitimate disposal of a vehicle also involves some costs. If the administrative costs of disposal of a vehicle in a legitimate way also result in illegal dumping. The old aged vehicle demands more repairs and maintenances. This resulting in very high repair cost, than its utility. This also results in increased illegal dumping of vehicles. Those vehicles which don't have insurance of greater value than the value of the vehicle also have a high risk of illegal dumping. The cars that built with some poor mechanism or low quality lose their value in the second-hand sale market. The risks of abandonment of these economically unviable vehicles are very high. The probability to pile up of abandoned vehicle is very high after natural calamities (Browse, 1987).

6.The Vehicle Licensing Regulation and Procedures: Insurance fraud and auto theft also work in favour of vehicle abandonment. People in the sake of availing insurance sometimes play fraud. By reporting a vehicle theft they try to avail the benefit of insurance and they dispose of their old age useless the bad condition car. The jurisdiction in many countries makes a store of abandoned or confiscated vehicles for a long period. This long abandonment will turn the vehicle for good for nothing. Usually, after a long period of seizure, these vehicles were auctioned for very low prices (Browse, 1987).

For the safe disposal of obsolete vehicles, the European Union had declared the 'end of life vehicle' (ELV) directives. There is an enhanced focus on ensuring public safety and social wellness. As there involve many stakeholders involved in the problem of abandoned vehicles co-ordination and support of different departments is demanded. As public safety and vehicle regulations are the responsibility of the police department to prepare plans and strategies for the effective disposal of these vehicles (Browse, 1987).

Some suggestions to get rid of the problems of abandoned vehicles are as follows as stated by Browse (1987).

1 Quicker identification and reporting of abandoned vehicles
2 Better coordination with other departments and agencies to fight against abandonment.
3 Ban of street parking overnight, establishing no parking zones.
4 Quicker cleaning of derelict vehicles.
5 Establish paid facility for long term parking near railway stations and airports.
6 Cleaning up campaigns for sweeping derelict or obsolete vehicles.
7 Providing legal awareness and insisting to report the abandoned vehicles.
8 Provision for cheaper legitimate disposal
9 Promoting private junk vehicle collection services.

CONCLUSION

Law enforcement by using technology will become more effective and economically viable. Use of autonomous vehicle technology in traffic law enforcement is proved to be effective and cost-efficient in dealing with cases of traffic-related crimes and its investigation and solving the issues of abandoned vehicles and in confiscation. (Tamara, 2013) stated that majority of the abandoned vehicles under the custody of police or authority and the vehicle and all types of movable assets are at the age of 'end of life vehicles' (ELVs) and when managed efficiently with scientific dismantling techniques can be utilised as an important source for substituting the primary raw materials, such as metals and other materials, which if recycled, can be again injected into the economy thereby ensuring sustainable resource circulation and also reduce the increased demand for virgin or new raw materials (N. Arora, Bakshi, & Bhattacharya, 2019). Economic growth comes out at the cost of sustainability. Nowadays, developing economies takes much care in growth and development, which won't come out as a supplement to sustainability. The sustainable growth needs much care and demands changes in the path of development through economic as well as social policies. It demands a judicial and optimum utilization of resources.

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