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...n forfeiture of the proceeds of drug crimes

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Forfeiture of proceeds of drug-related crimes: a British Commonwealth perspective

S. K. CHATTERJEE
Senior Lecturer in International Law, City of London Polytechnic, London, United Kingdom of Great Britain and Northern Ireland

ABSTRACT

The forfeiture of the proceeds of drug-related offences does not seem to have received much attention as yet from British Commonwealth countries. Whereas in some of these countries specific legislation exists in relation to forfeiture, in many other countries the act of forfeiture falls within the purview of general criminal law. Forfeiture presupposes enquiry and search, two procedures which involve integral aspects of present-day human rights law, and which seem to be impeded at almost every stage of the process concluding in forfeiture. Time and the procedure for execution of judgments seem to be two significant factors in the successful enforcement of forfeiture judgments. Unfortunately, given the present practice of maintaining inviolability of bank secrecy, effective enforcement of forfeiture judgments is not possible. Perhaps an international convention may offer some assistance in the successful implementation of a forfeiture judgment, especially where the ill-gotten gains have been transferred to a foreign jurisdiction.

Introduction

Effective implementation of international conventions by the parties to them depends on two things: first, the willingness of the parties to adhere to the conventions and to embody their provisions in effective national legislation; and second, the availability of appropriate enforcement machinery. An international convention that enshrines principles of criminal law is destined to encounter certain special difficulties in its implementation, owing to the very individualistic attributes of the criminal law of every State. The Single Convention on Narcotic Drugs, 1961 [1], the 1972 Amendment to that Convention [2], and the Convention on Psychotropic Substances 1971 [3] have provided for action against the illicit traffic in drugs and psychotropic substances. The penal provisions of these Conventions offer the basis for forfeiture of ill-gotten gains from the illicit drug trade [1, article 36; 2, article 36; 3, article 22] but these provisions are subject to the constitutional limitations of the parties to the Conventions, their legal systems and domestic laws [4].

In this article an attempt is made to trace the basis for forfeiture of ill-gotten gains from drug trafficking in certain countries of the British Commonwealth and to identify the actual provisions of forfeiture. Included in this discussion are a few tentative suggestions as to how the act of forfeiture in relation to drug-related offences may be made more effective at the national level.

Interrelationship between forfeiture, search and seizure

According to Jowitt, "Forfeiture is where a person loses some property, right, privilege or benefit in consequence of having done or omitted to do a certain act" [5]. In English law, the act of forfeiture has often been associated with acts or omissions in relation to breaches of contract, treason, felony, self-surrender, denial by a tenant of his landlord's title over the latter's property etc.

It should be noted that a discussion of forfeiture necessarily entails a discussion of search and seizure. In view of the constraints of the length of this article, it is not possible to discuss the legal issues pertaining to these two concepts. It may be pointed out, however, that a variety of issues of human rights and fundamental freedoms are germane to search and seizure. It is quite possible to exercise forfeiture without going through the process of search and seizure, although searching and seizing may be a useful means of securing forfeiture in drug-related offences.

Seizure includes search. Search may be made of persons or property or both. The procedure pertaining to search and seizure varies from one legal system to another, and the margin of lawfulness of search and seizure provokes formidable legal controversy [6, 7]. The power of forfeiture and seizure can be derived from specific legislation or from the open-door policy of a Government, usually known as public security and public policy. In many countries constitutional provisions have been made against the probable abuse of governmental power. The Fourth Amendment[1] to the Constitution of the United States of America accommodating protection of the public against governmental abuse of the right to property and privacy is an example in point.

The basis for the Anglo-American law of search and seizure may be traced to *Entick* versus *Carrington* [8]. In practice, the power of search and seizure is based not on the discretionary power of executive officers but on the authorization of law officers such as magistrates and judges. Authorization in this regard was required to be very specific as to the place of

[1] "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

search and the object to be looked for. In other words, evidence of criminal activity, complicity and identification of the location were *a priori* conditions of the grant of an authorization for search and seizure. The rigidity about authorization for search and seizure was primarily due to the sanctity attached to the right to privacy of the individual. Even in cases of authorized search and seizure, the degree of search and the extent of seizure raised a host of incidental legal problems. Modern technology has provided the means to perform more effective searches, raising more complex legal issues pertaining to the individual's right to privacy.

Whereas by virtue of the Fourth Amendment, the rules governing search and seizure have been transformed into a United States constitutional doctrine, the common law system relating to this matter is based on numerous statutory provisions and judicial precedent. In the United States there is a positive thrust in the law of search and seizure; that is, the Constitution gives the authority to take the initiative and action. In the case of search and seizure, the basic right to privacy is relegated to a subordinate position at least on the ground of public security, and the judiciary undertakes the tasks both of protecting the constitutional right and of interpreting the relevant law and building its own jurisprudence.

Under the common law system, however, in the absence of any constitutional right to search and seizure, the courts whose function it is to protect the rights of the individual have to rely exclusively on various statutory provisions. The courts have to ensure that the statutory provisions are interpreted correctly and appropriately in order that the individual's right in this regard is not unduly widened or narrowed down. Under this system there is a negative thrust in the law of search and seizure. Unless the question of public security is involved in a given case, the negative thrust in the law of search and seizure should prevail.

A brief history of the right to forfeiture under common law

Under common law, the right to order forfeiture originated in recognition of the king's right to do so on a conviction of his subjects for treason or felony. The rationale of this right of the king seems to have two bases, political and economic. Any political offence was, for obvious reasons, an offence against the king. From an economic point of view, if the king had not been allowed to assign a chose in action[2], his revenue would have suffered. The proceeds could be a source of invaluable revenue, and such a power was essential in order to enable him to deal with debts due to him from his officials [9, p. 539]. In the course of time, the king's grantee was allowed to sue in his own name and anyone was allowed to assign a chose in action to the king [9, p. 540].

[2] Personal rights of property claimable or enforceable by legal action.

The controversy over whether the right of action in respect of both choses in action and choses in possession[3] should be forfeited to the king persisted [10] until 1854, the date of the passing of the Common Law Procedure Act. The chose in action not being a tangible thing, the question of its physical seizure or sale did not arise.

Magna Carta clearly stated that the Crown had no right to forfeiture in the case of ordinary felony. In the case of high treason, however, it was believed that the Crown had a stronger claim than the claim of the feudal lord. It was not until the Statute of Uses, 1536, however, that the right of the Crown was restored to the revenue arising from the right of forfeiture.

With the creation of separate economic units on a geographical basis, particularly the Boroughs in the thirteenth century, the situation began to change. In actions for debts a tally was in some Boroughs as good as a deed [11]. Parallel to this development grew the idea that ill-gotten gains must be surrendered, otherwise the owner of such gains would be made liable. The idea that guilt attaches to the thing by which wrong has been done lingered in the English criminal law until the nineteenth century. Until 1846, the instrument that by its motion directly caused death was forfeited to the Crown as a deodand [11, p. 47]. It is interesting to note the moral-legal controversy as to forfeiture of property to the Crown on the grounds of felony, clearly seen in the writings of Holdsworth – for example:

> "If a felony is a crime against the State, and if it is desirable to confiscate the property of criminals, one would think that the State should benefit. But this would have been too serious a departure from feudal conceptions to be insisted on. The establishment of an effective criminal law was difficult enough. It would have been well-nigh impossible if it had diminished the proprietary as well as the jurisdictional rights of the landowner. At all events, whatever may have been the wishes of the Crown, the will of the great landowners was clearly and decisively expressed in the clause of Magna Carta in which the Crown renounced any claim to forfeiture on the ground of felony. In the thirteenth century, then, a conviction for felony entailed the escheat of the lands of the felon to the lord; and the conviction related back to the moment of the commission of the crime, so that all intervening dealings with the property were avoided. As the newer conception of felony prevailed it was supposed to have this effect because the felon's blood was attained or corrupted. He could not own any property himself, nor could any heir born before or after the felony claim through him" [12].

Until 1870, all property, whether real or personal, of a person convicted of treason or felony was forfeited to the Crown, and this practice proved to be a lucrative source of revenue for the Crown. But forfeiture of property could be avoided by conveying the property to a trustee and by influencing

[3] Tangible objects of property rights which can be reduced to actual possession.

the jury to return verdicts in favour of the accused. Forfeiture on conviction was abolished by the Forfeiture Act, 1870.

Forfeiture in relation to theft and property-linked offences had no origin in common law. Forfeiture in relation to drug-offences was also unknown to common law. Forfeiture in early English law was, in effect, based on the notion of loyalty between the subject and his lord. In the case of forfeiture in relation to drug-related offences, there is no room for any such loyalty between the Crown and its subjects. The basis for forfeiture of the ill-gotten goods and gains would be the breach and disregard of the moral standard of the society. Additionally, the acquisition of a quantity of unaccounted-for drugs would pose health hazards to countless people. In the circumstances, despite the fact that the concept of forfeiture was known in early English law, forfeiture in relation to drug-related offences cannot be based on the early experiences. Indeed, it is primarily statute-based law that now governs forfeiture.

In this connection, it may be pointed out that the member States of the British Commonwealth have no experience of forfeiture in relation to any criminal act, whether drug-related or otherwise, other than that which may be permitted by their respective legislations. Additionally, their notion of crime and the moral fabric of society are in many cases different from that of the United Kingdom. It is in this perspective that the concept of forfeiture, search and seizure in relation to drug-related offences should be considered.

Legislation on forfeiture

Although the commercial law of the States in the British Commonwealth prior to their becoming independent was, to a large extent, influenced by English legal principles, the criminal law of many of those States showed a certain individuality. There may therefore be no similarity in many cases between the English law of forfeiture and the corresponding law of the British Commonwealth countries. Additionally, the special characteristics of common law cannot be found in many of the newly independent States of the British Commonwealth.

Almost all the countries in the British Commonwealth are governed by written constitutions with enshrined fundamental rights and freedoms, including the right to privacy and the right to protection from deprivation of property without compensation. Of course, in the public interest or in the interest of national security, a specific statute may restrict or even take away a constitutional right. Therefore, there is no contradiction in this respect between a constitutional right and a statutory provision restricting that right. In the United Kingdom, however, in the absence of a formal constitution, common law and statute law offer sufficient protection to fundamental rights and freedoms of individuals. Whereas in most parts of

the British Commonwealth the jurisprudence of the courts is based on constitutional and statutory provisions, in England the system of judicial precedent, based on the interpretation of statute law and common law, develops the jurisprudence of the courts. Ingrained in the jurisprudence of the English courts is the belief in the sanctity of an individual's fundamental rights and freedoms. Development of law by interpretation of statutory provisions is fundamental to English law. It is in this context that in English law the right to order forfeiture of ill-gotten gains and goods has to be considered.

English law as to forfeiture of goods and gains connected with drug offences

In England, specific powers to order forfeiture of goods and gains connected with drug offences are contained in more than one statute. The most important statutes in this regard are the following:

Police (Property) Act 1897
Theft Act 1968
Misuse of Drugs Act 1971
Criminal Justice Act 1972
Powers of the Criminal Courts Act 1973

In England, criminal courts may order the forfeiture of property illegally possessed or property possessed legally but being used for the purpose of committing or abetting an offence [13]. Similar provision has also been made in section 27 (1) of the Misuse of Drugs Act 1971. Section 27 (2) of this Act, however, provides that:

> "The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made."

This section does not indicate whether the order to forfeit shall be made at the time of the conviction. If the court hears further evidence with regard to forfeiture after conviction, then it would only prolong the act of forfeiture and make the prospects of forfeiture remote unless the court grants an injunction prohibiting removal of the objects of forfeiture. Although, under the Misuse of Drugs Act, the power of the English courts to order forfeiture of things relating to an offence is discretionary, they can order the forfeiture of anything shown "to relate to the offence" [14, p. 401]. According to section 27 (1), forfeiture is not limited to things found in the possession of the convicted person; in other words, this subsection gives the court the authority to forfeit a house or money or any other property which might have been used in relation to the offence.

Sections 32 and 43 of the Powers of the Criminal Courts Act 1973 have conferred on the English courts a general power of forfeiture, but according to section 11 of the Act, such power must be exercised within twenty-eight days after conviction.

Section 23 of the Criminal Justice Act 1972 empowers the courts to deprive a person of property used or intended for use for the purpose of crime. Subsection 2 of section 23 provides that:

> "An order under this section shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall if not already in their possession be taken into the possession of the police."

The application of this section has, however, been restricted by the Police (Property) Act 1897. Section 23 (3) of the Criminal Justice Act 1972 provides that:

> "*(a)* No application shall be made under section 1 (1) of that Act [the Police (Property) Act] by any claimant of the property after the expiration of six months from the date on which the order in respect of the property was made under this section;
>
> "*(b)* No such application shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in sub-section (1) of this section."

It is interesting to follow the development of the law of forfeiture in relation to drug-related offences in England through judicial pronouncements. The most important decided cases in this area of law are: *R.* versus *Menocal* [15, p. 510] and *R.* versus *Cuthbertson* [14, p. 401].

In *R.* versus *Menocal*, on 14 August 1976 a customs officer at Heathrow Airport observed the appellant, Frances Kathleen Menocal, join two women on their arrival from Bogota. In a suitcase belonging to one of them, 2,646 grams of cocaine were found. Menocal had arrived earlier that day from Ibiza. Being a suspect, her handbag was searched according to law, and the total value of the assorted currencies in her handbag was found to be £4,371. Menocal admitted that she had been involved in a drug-ring since 1975 and that she had supplied the specially constructed suitcase to her confederate. On that occasion, the purpose of her arrival was to act as an escort for her accomplices and for such services she was to receive $US 5,000.

On 31 January 1977 Menocal pleaded guilty at the Middlesex Crown Court to the following count:

Statement of offence

> "Being knowingly concerned in the fraudulent evasion of the prohibition on importation of a controlled drug, contrary to section 304

of the Customs and Excise Act 1952 as amended by section 26 of the Misuse of Drugs Act 1971."

Particular of offence

"... knowingly concerned in the fraudulent evasion of the prohibition on importation imposed by section 3 (1) of the Misuse of Drugs Act 1971."

Menocal was sentenced to five years' imprisonment and on 9 May 1977 the same court, on an application by the Commissioners of Customs and Excise, ordered forfeiture of the £4,371 under section 27 of the Misuse of Drugs Act 1971, alternatively, under section 43 of the Powers of the Criminal Courts Act 1973, on the ground that "the whole of this sum of money ... had been provided by her employers to assist them in dealing with this importation" [15, p. 517].

Menocal appealed against the order, but the Court of Appeal dismissed her appeal [16] on the ground that "the power of forfeiture contained in section 27 of the Misuse of Drugs Act 1971 was not in the nature of a sentence and was therefore not subject to the restriction contained in section 11 (2) of the Courts Act 1971, that a sentence imposed, or other order made by the Crown Court when dealing with an offender, if it was to be varied or rescinded by the Crown Court, could only be varied or rescinded within 28 days of the passing of the original sentence."

On appeal, the House of Lords pronounced that a "forfeiture order including an order made under section 27 of the Misuse of Drugs Act 1971, being in the nature of a penalty, was a sentence for the purpose of section 11 (2) of the Courts Act 1971 ... Because the forfeiture order made against the appellant had not been made within 28 days of her original sentence, it was therefore invalid" [15, pp. 510—511] and her appeal was accordingly allowed.

R. versus *Cuthbertson* was brought before the English courts as a result of what became popularly known as "Operation Julie" in the United Kingdom. In this case three appellants produced and supplied a hallucinogenic drug, lysergide, for several years and made enormous profits. Two of the appellants transferred a substantial part of their share in the profits to bank accounts in France and Switzerland. They were convicted of conspiracy in contravention of section 4 of the Misuse of Drugs Act 1971. The appellants' assets had been traced as representing the proceeds of their criminal activity. The trial judge ordered the forfeiture of their ill-gotten gains under section 27 of the Misuse of Drugs Act, against which the appellants appealed, contending that the power of forfeiture under the Act applied where "a person is convicted of an offence under the Act and not to a conviction for conspiracy to commit under the Act". They also contended that the power of forfeiture only extended to anything shown "to relate to" an offence.

The Court of Appeal dismissed their appeal; the appellants therefore appealed to the House of Lords. The appeal was allowed by the House of Lords on the following grounds:

(a) The offence of which the accused had been convicted was not an offence under the Act and that "conspiracy to commit an offence under the 1971 Act, whether charged as a statutory conspiracy under section 1 of the Criminal Law Act 1977 or as a conspiracy at common law before that section came into force, was not an offence expressly created by the 1971 Act" [14, p. 401].

(b) "In any event, applying a purposive construction to section 27, the power of forfeiture applied only to tangible things capable of being physically destroyed and not choses in action or other intangibles, and ... then only when those tangible things were shown 'to relate to' an offence under the Act which in the case of conspiracy they could not be since conspiracy by its nature consisted of an unperformed agreement and did not involve any dealing by the offender with anything tangible relating to the offence at all" [14, p. 401].

Legislation in certain other jurisdictions of the British Commonwealth

Forfeiture provisions in general or specific terms, in the latter case in relation to drugs, in the legislation of various countries or territories of the British Commonwealth are presented below. In the absence of specific provisions relating to drug cases, provisions of forfeiture may have to be traced to either the penal code or the customs and excise legislation, or even to the general criminal law of the country or territory concerned.

Antigua

The relevant provisions, contained in the Misuse of Drugs Act 1973 [17], are as follows:

> "28. (1) Subject to subsection (2), the court by or before which a person is convicted of an offence under this Act may order anything shown to the satisfaction of the court to relate to the offence, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
>
> "(2) The court shall not order anything to be forfeited under this section, where a person claiming to be the owner of or otherwise interested in it has applied, before the making of the order, to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made."

Australia

The Customs Amendment Act 1979 (No. 92) [18] has given the law enforcement agencies in Australia more effective power of seizure than before for offences related to narcotic drugs. Any money, including cheques, and goods found in the possession or under the control of a person by reason of his illicit dealing in drugs is subject to forfeiture; such forfeiture extends to goods converted into money and vice versa.

This Act extends to property acquired outside Australia. Evidence of the market value of the drugs in question may be heard by the courts and the pecuniary penalty is fixed by reference to the accused's turnover, not his net profit. Courts are empowered to appoint the Official Receiver to take over the accused's property, details of which may be found through examination of the accused. A charge is created on the offender's property and it takes priority over all other encumbrances whatsoever, unless a bankruptcy petition is filed within six months of the court order to the Official Receiver to pay the pecuniary penalty, in which case the second order will take precedence over the first.

Bermuda

The relevant provisions, contained in the Misuse of Drugs Act 1972 [19], are as follows:

> "37. (1) A court may (whether or not any person has been convicted of such offence) order to be forfeited to the Crown:
>
> "*(a)* Any money or thing (other than premises, a ship exceeding two hundred and fifty gross tons or an aircraft) which has been used in the commission of or in connection with an offence under this Act; and
>
> "*(b)* Any money or other property received or possessed by any person as a result or product of an offence under this Act."

Canada

The Narcotic Control Act offers a limited power of forfeiture of the proceeds of illicit narcotic sales and a police officer may seize any object which he reasonably believes to be related to the commission of a narcotic offence. Apparently, the power of seizure may be exercised only over those things that may be tendered in evidence. Conversion of ill-gotten gains can operate as a means of avoiding forfeiture. The Canadian Criminal Code contains a general provision according to which tangible portable objects may be seized only on the strength of a search warrant issued under the Code. Such an object must, however, be brought before a justice of the peace who, on being satisfied that it is no longer required for purposes of

investigation or trial, that the lawful owner is not known and that it is in the unlawful possession of the person from whom it is seized, may issue an order of forfeiture. This provision excludes intangibles [20, 21].

Gambia

The relevant provisions, contained in the Dangerous Drugs Act 1964, are as follows:

> "Section 23. (2) Every person guilty of an offence against this Act shall, in respect of each offence, be liable on conviction to a fine not exceeding one thousand pounds or to imprisonment not exceeding seven years, with or without hard labour, or to both such fine and imprisonment and shall, in every case on conviction for the offence forfeit to Her Majesty all articles in respect of which the offence was committed, and the court before which the offender was convicted may order any forfeited articles to be destroyed or otherwise disposed of as the court thinks fit: . . ."

Hong Kong

The relevant provisions, contained in the Dangerous Drugs Ordinance 1969 [22], are as follows:

> "56. (1) A court may (whether or not any person has been convicted of such offence) order to be forfeited to the Crown
>
> "*(a)* Any money or thing (other than premises, a ship exceeding two hundred and fifty gross tons, an aircraft or a train) which has been used in the commission of or in connection with an offence under this Ordinance; and
>
> "*(b)* Any money or other property received or possessed by any person as the result or product of an offence under this Ordinance.
>
> "(2) An order under subsection (1) for the forfeiture of a thing may include a term permitting a specified person or persons to redeem such thing on such conditions, including conditions as to the payment of the value or a proportion of the value thereof to the Crown, as the court may think fit.
>
> "(3) The court may require that notice of an application for forfeiture under subsection (1) shall be given in such manner as it thinks fit.
>
> "(4) The Governor in Council may, in his absolute discretion and after any proceedings under this Ordinance are concluded, entertain and give effect to any moral claim to or in respect of any money, thing or other property which has been forfeited to the Crown."

Kenya

The relevant provisions, contained in the Customs and Excise Act 1978, are as follows:

"Section 201. (1) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then the conviction of such person of such offence shall, without further order, have effect as the condemnation of such thing.

"(2) Where any person is prosecuted for an offence under this Act and any thing is liable to forfeiture by reason of the commission of such offence, then, on the acquittal of such person, the court may order such thing either –

"*(a)* To be released to the person from whom it was seized or to the owner thereof; or

"*(b)* To be condemned."

This section should be read with sections 198 and 199 of the Act.

Malaysia

Section 407 of the Criminal Procedure Code gives the courts a general power of forfeiture in respect of any property or document in relation to which an offence appears to have been committed or which has been used for the commission of an offence, unless this power is subject to any special provisions relating to forfeiture, confiscation etc. contained in the written law under which the accused was convicted. Courts are also empowered to order forfeiture of property regarding which an offence has been committed, even in its converted or exchanged form, or anything acquired by conversion or exchange of the original property.

Mauritius

The relevant provisions, contained in the Psychotropic Substances Act 1974 [23], are as follows:

"9. (1) The Comptroller of Customs shall seize any consignment of a psychotropic substance which does not comply with section 7 or 8.

"(2) Any psychotropic substance seized under subsection (1) shall be forfeited to the Crown."

New Zealand

The relevant provisions, contained in the Misuse of Drugs Order (No. 2) 1978 [24], are as follows:

"Section 46. GARNISHEE PROCEEDINGS. (1) For the purpose of enforcing the payment of any fine imposed by any Court on conviction of an offender of a drug dealing offence, a sum that stands to the credit of the offender with any person (including a bank or savings bank) and that is on deposit with that person or is held by him in a current or other account (including a deposit account) shall be deemed to be a sum due or accruing to the Registrar enforcing the fine and shall be attachable accordingly, notwithstanding that any of the following conditions applicable to the deposit or account, that is to say

"*(a)* Any condition that notice is required before any money is withdrawn:

"*(b)* Any condition that a demand for payment must be made:

"*(c)* Any condition that a personal application must be made before any money is withdrawn:

"*(d)* Any other condition (other than a condition that a deposit book, receipt for money deposited, or other like document must be produced before any money is withdrawn)

has not been satisfied."

Nigeria

The relevant provisions, contained in the Criminal Procedure Code, are as follows:

"Section 139. (1) Where a recognizance to keep the peace and to be of good behaviour or not to do or commit some act or thing, has been entered into by any person as principal or as surety before a court, a court may, upon proof of the conviction of the person bound as principal by such recognizance of any offence which is by law a breach of the condition of the same, by order, adjudge such recognizance to be forfeited and adjudge the persons bound thereby, whether as principal or as sureties or any of such persons to pay the sums for which they are respectively bound."

Singapore

The relevant provisions, contained in the Misuse of Drugs Act 1973, are as follows:

"Section 24. (1) Whenever anything is seized under this Act, the seizing officer shall forthwith give notice in writing of such seizure to the owner of such thing, if known, either by delivering such notice to him personally or by post at his place of abode if known:

"Provided that such notice shall not be required to be given where such seizure is made in the presence of the offender or the owner or his

agent, or in the case of a ship or aircraft, in the presence of the master or captain thereof.

"(2) An order for the forfeiture of any controlled drug or article shall be made if it is proved to the satisfaction of a court that an offence under this Act has been committed and that such controlled drug or article was the subject matter of or was used in the commission of the offence notwithstanding that no person may have been convicted of such offence.

"(3) If there is no prosecution with regard to any controlled drug or article seized under this Act such drug or article shall be deemed to be forfeited at the expiration of one month from the date of the seizure thereof unless a claim thereto has been made before that date in such manner as may be prescribed.

"Section 25. Where a person has been convicted of an offence under this Act, the court may order to be forfeited to the Government any ship, hovercraft, aircraft or vehicle which has been proved to have been used in any manner in connection with such offence except that –

"*(a)* This section shall not apply to any ship or hovercraft of more than two hundred tons net or to any aircraft belonging to any person carrying on a regular passenger service to and from Singapore by means of such aircraft; and

"*(b)* No ship, hovercraft, aircraft or vehicle shall be forfeited under this section, if it is established by the owner thereof that such ship, hovercraft, aircraft or vehicle was unlawfully in the possession of another person without the owner's consent."

Zambia

The relevant provisions, contained in the Dangerous Drugs Act 1967, are as follows:

"Section 19. (3) A person convicted of an offence against this Act shall forfeit to the Republic all articles in respect of which the offence was committed, and the court before which he is convicted may order those articles to be destroyed or otherwise disposed of as the court thinks fit."

Conclusions

Forfeiture as practised within the British Commonwealth appears to be of relatively recent origin. It gives rise to various administrative and legal issues. The purpose of forfeiture is primarily to debar the accused from enjoyment of the fruits of his ill-gotten gains. Unlike other crimes, however,

offences or crimes related to illicit trafficking in drugs may not be committed against any specific individual. There may not be any victim of the crime; there may only be a breach of the relevant legislation and the moral standards of society. Therefore, a new kind of law-making is necessary whereby the State would have complete authority to forfeit the ill-gotten gains of drug offences.

The law of forfeiture may be developed by two means: internal, that is domestic legislation and law enforcement; and external, that is means that develop through the co-operation of States.

Internal means

(a) Orders of conviction should include provisions of forfeiture, and forfeiture should be seen as an integral part of the main sentence. This practice would also avoid the problems of time-barred cases [15, p. 510].

(b) Law enforcement officers should be given the authority to search the abode and business premises of a suspect and to seize any articles associated with drug-trafficking and other moveable property until the case has been judicially settled.

(c) All States, whether members of the British Commonwealth or not, should be encouraged to enact specific statutes or other legislation on forfeiture.

External means

Unless radical changes in the international business world are made, the difficulties will persist as to forfeiture of ill-gotten gains in a foreign jurisdiction. Tax havens and the practice of maintaining secret bank accounts are two of the obstacles in attaining full international co-operation in this regard. Additionally, the system of free movement of capital within a customs union or between certain countries only encourages owners of ill-gotten gains to transfer their gains to a foreign jurisdiction, escaping forfeiture. To this must be added the difficulty caused by the conversion of money or property before the order of forfeiture is made. Although it may be extremely difficult to prevent the transfer of ill-gotten gains to various foreign jurisdictions in small instalments, at least the co-operation of States could be sought by means of an international convention on the investigation of the sources of large sums of money before allowing them to be deposited in foreign accounts.

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