Accomplishing Human Rights Justice in the context of Assets Confiscation: An Evaluation of the United Kingdom Drug Laws Enforcement

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Accomplishing Human Rights Justice in the context of Assets Confiscation: An Evaluation of the United Kingdom Drug Laws Enforcement

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ABSTRACT

It is estimated that crude oil, tourism and illicit drug trade are among the top five most financially inducing business in the world. Drug cartels conducts sophisticated and well organised activities including money laundering and monitoring of large networks of their couriers. In past the decade, the United Kingdom has incurred large expenditure on the treatment of drug related illnesses and, on the enforcement of drug control laws. Several drug laws are enacted to dealing with the waves of illicit drugs in the country. There is controversy over the ways by which the properties of the drug traffickers and suspected drug dealer, are seized by the State; in order to seize anyone's private property prior to commencement of legal proceedings to effect permanent forfeiture, the law enforcement agencies are only required to show "probable cause" that the property being seized is acquired with the profit of drug crime alternatively, that the property facilitates drug criminal activities. Using data from academic materials and United Kingdom case laws, the paper argues that the United Kingdom drug trafficking laws particularly the enforcement of "civil asset recovery" under the Proceeds of Crime Act 2002 and, the "Criminal confiscation" under the Drug trafficking Act 1994 violates the International Human Rights Laws.

Keywords: Drugs, Human Rights, UK laws, Criminal property

INTRODUCTION

Drug trafficking is currently one of the world's fastest growing industry with multi-billion dollars value and, touching every country. According to the International Monetary Fund (IMF) estimation, between 2 and 5 percent of the world's Gross Domestic Product are from money laundering (Annan, 1998).

In recent years, there has been a growing concern over the manner in which properties of 'drug traffickers' are confiscated or forfeited pursuant to the provisions of the Customs and Excise Management Act 1979, the Police and Criminal Evidence Act 1984 (Codes of Practice; Modified Code C and Code D) Order 2002, and Drug Trafficking Act 1994. The only requirement for the law enforcement agencies to be able to confiscate a person's property and initiate court actions for permanent forfeiture is, if they can show

probable cause which is the least standard of civil proof, that the property was used to facilitate drug related offences or that the property is a benefit of drug related offences. In civil proceedings, *probable cause* can be established by mere hearsay evidence.

The acceptance of *probable cause* as yardstick to measuring guilt violates the person's right to fair hearing enshrined in various human rights laws, treaties and conventions such as Article 6 of the European Convention on Human Rights. It defeats the objects of the requirements for the presumption of innocence which is the cornerstone of legal proceedings in both criminal and civil charges. In the United Kingdom, in some cases, the accused persons are denied the right to question their accusers as to circumvent the burden of proof that their properties are not benefits of crime and are not aid to the crime of drug trafficking.

In the circumstances where individual properties can be confiscated based on flimsy evidence such as the words of informants, who themselves are in some instances, accused criminals, ex-convicts and profit-seekers that benefits from their testimonies, by infringing the due process of law and assisting in the violation of the human rights of the of the accused.

In the making of drug policy and in the enactment of drug trafficking legislation worldwide, the policy/law makers are typically faced with two issues namely - supply reduction and demand reduction. The former involves making laws and policies tailored towards the reduction of narcotic supply and, the later is about the treatment of the treatment of drug related illnesses. The main objective of this paper is to critically evaluate the supply reduction efforts of the United Kingdom government.

METHODS AND MATERIALS

Data on drugs misuse and drugs availability are used for the purpose of substantiating logical arguments. Much of the discourse is based on decided cases. The paper places heavy reliance on the activities of the United Kingdom law enforcement agencies; the crown prosecution service and the courts with emphasis on broad perspective of the United Kingdom national laws on drug trafficking; possession of controlled drugs; and, the UK compliance with international human rights standards with regards to the handling of drug traffickers and, the confiscation and forfeiture of assets with particular focus on the Misuse of Drugs Act 1971, the Customs and Excise Management Act 1979, the Criminal Justice (International Co-operation) Act 1990, the Drug trafficking Act 1994, the European Convention on Human Rights (Human Rights Act, 1998) and the Universal Declaration of Human Rights of 1948.

Drug trafficking is huge enterprise with very profitable income to the drug cartels and traffickers. It does not require the advertising of merchandise yet customers are never scarce. The criminal networks that control the business across the world have similar traits- skilful and ruthless; often prepared and willing to risk everything including their lives to defend their goods and colleagues against all organised law enforcement activities of governments tailored towards curtailing their illicit activities.

Drug trafficking networks are willing and capable of infiltrating the corridors of national and international policy making chambers, minimising and countering law enforcements through bribery and corruption; and, sometimes sponsor politicians and influential persons to position of power and leadership in government to protecting their enterprises. In some cases, the assassination of persons that hinders the progress of the drug trafficking enterprise is the chosen option.

Willoughby (1988) observes that drug traffickers are often attracted to countries where there is stable political climate that guarantees the stability of currency with little or no foreign exchange controls as well as countries that have well defined regulatory framework which permits bank secrecy, marginal little tax liability, and a financial system sophisticated enough to handle large transactions effectively.

In the United Kingdom, there is different public opinion about drug abuse and drug trafficking. Some believe that narcotic drugs are dangerous for the health of the society, others argue that narcotic drugs are medicinal and that they are not any worst than tobacco and alcohol.

Whatever axis one might support, it is crucial to observe that the misuse of narcotic drugs can have severe consequences on the individual, family and society. Tiggey, et. al., (2000) cited the reports compiled by the British Crime Survey in which it is claimed that an estimated that:

> "Four million people in England and Wales use illicit drugs each year. A minority engage in heavier use of a wider variety of narcotic drugs, including heroin and crack cocaine; and a proportion of this minority are users with serious problems of drug dependency. The costs arising from problematic drug are estimated at about £4 billion a year".

It is very difficult to ascertain the size of the illicit drug trade in the United Kingdom due to the difficulty in quantifying the volume of inward flowing narcotics and not much is known about the arrangement of the distribution process and how the illicit drug markets are responding to changes in supply and demand, and the effectiveness of the law enforcement (Tiggey, et. al., (2000). In 1989, the UK government confessed that it cannot accurately estimate the degree of illegal drug trafficking activities in the country because it "is notoriously difficult" (Home Office, 1989) to make such assessment. However, one thing is certain, drug trafficking is thriving in the United Kingdom, for instance, it was noted that:

> "The profit margins for major traffickers of heroin into Britain are so high they outstrip luxury goods companies such as Louis Vuitton and Gucci…the traffickers enjoy such high profits that seizure rates of 60-80% are needed to have any serious impact on the flow of drug into Britain but nothing greater than 20% has been achieved" (Guardian Newspaper, July 5, 2005).

Roe (2005) reports that in 1996, 48% of 16 to 24 years old people in the United Kingdom confirmed to having used illegal narcotic drugs at least once. Among the number that have used narcotic drugs in that category, 18% used the drugs within one month of the survey; and, in 2004/05 the British Crime Survey (cited in Roe, 2005) estimated that among persons between the age of 16-59, 34.5% had used at least one illicit narcotic drug, 11.3% used one or more illicit narcotic drugs within one year of the survey and, 6.7% within one month prior to the survey. The mandatory testing of people charged with drug related offences in 2004/5 revealed that between 36% and 66% tested positive for narcotic drug (predominately cocaine and heroin) use (Home Office, 2004).

Most of the illicit narcotic drugs entering the United Kingdom are carried by foreign nationals, for example Green (1996); Green *et. al.,*(1994) and Hammond (1994, 1995,1996) found that only 28.3% of British citizens were jailed for drug trafficking compared to 71.7% of foreign nationals convicted for trafficking drug in the Britain in 1989. Among the foreign nationals were Nigerians, 29.8%; All other African countries, 5.6%; West Indians, 8.7%; Columbians, 5.3%; Pakistanis, 5.1%; Dutch, 3.3%; and, the rest of the world, 13.9%. The problem with the statistics is that it did not specify whether the figures were based on arrest at United Kingdom entry ports and/or whether it was comprehensive data of all drug traffickers convicted during the period. Burgess (2003) explains that drug traffickers that import drugs into the United Kingdom are mostly young women with dependent children and are often very poor; desperate for money; lacks adequate knowledge of the crime and the extent of the associated danger.

The Runciman Report *(1999)* on drugs misuse and drug crimes in the United Kingdom recommended amongst others that, the drug laws ensure fairness, consistency, enforceability, flexible and just. The report further lamented that full eradication of drug trafficking and drug misuse in the United Kingdom is not possible however, that drug legislation must be compatible with international human rights laws. The report concludes that:

> "…we see no evidence that severe custodial penalties are deterring traffickers, or that enforcement, however vigorous, is having a significant effect on supply…We have come to the conclusion that the law and, more particularly, its implementation, need strengthening to make it more difficult both to derive huge profits from drug trafficking and to reinvest those profits in the drug trade and other criminal enterprises for farther gain" (Runciman, 1999).

The Runciman Report does not believe that the strictness of the United Kingdom drug laws and the severity of the drugs control regime are having much effects and deterrence. The development of the UK drugs laws could be traced back to the enactment of the Pharmacy Act 1868, followed by the Parliamentary motion of 1906 directed towards the elimination of the production of opium by China which subsequently led to the Chinese enactment of legislation which attempted to curtail opium production in 1916. In Britain, there was steady development of drug control laws. As of 1908 there was restriction on the

sale of opium to only registered pharmacist. In 1917, there was national control of cocaine, heroin and morphine and the enactment of the Dangerous Drugs Act 1920 followed by the control of cannabis in 1925; amphetamines in 1964, and LSD in 1966.

On international front, there has been several developments within the framework of the United Nations regarding drug trafficking and drugs misuse laws. For example, Article 3 (1) (a) (i) and Article 3(2) of the UN Convention 1988 provides that:

> "Each party shall adopt such measures as may be necessary to establish as criminal offences under domestic law, when committed intentionally: The production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Conventions, the 1961 Convention as amended or the 1971 Convention".

And Article 3(2) UN Convention 1988 requires that States are to criminalise all offences and acts of drug possession and drug trafficking in accordance with the constitutional principles and basic concepts of law. This clause has created lack of uniformity in the enforcement of drug laws across the world in the sense that some countries modify drug laws to such extent that the prohibit drug possession in certain quantity is not punishable in law whilst other countries criminalise the possession of any quantity of narcotic drugs. Alongside the national drug laws are the international human rights obligations which are expected to go hand in hand without prejudice to national security.

In the United Kingdom, The Medicines Act 1968 provided that the possession of controlled drugs and drugs that requires prescription without authority is punishable under the Act. The MDA 1968 merged almost all of the previous drug laws in the country. The Misuse of Drugs Act 1971 categorised drugs into three major headings namely: A, B and C with category "A" being the most dangerous and "C" being the less dangerous comparatively. Class A include but not limited to heroin, LSD, mescalin, methadone, morphine, opium, PCP, pethadine, poppy straw, psilocybin, STP, ecstasy, cocaine, coca leaf, dicanol, and cannabinol etc. Class B include but not limited to - codeine in concentrations above 2.5%, DF118, amphetamine, ritalin and barbiturates. Class C are - cannabis, benzodiazepines, Methaqualone, and valium.

In accordance with the Misuse of Drugs Act 1971, each category of the drugs attracts different degree of legal sanction. The Act distinguishes between the offence of possession and the offence of trafficking. It considers trafficking as acts involving supply and or conspiracy to supply irrespective of the quantity of the drugs. The possession of the drug with the intention to supply is regarded as trafficking. The test for intent the prosecution is allowed to adduce evidence from wide range of sources to prove its case. Table 1 presents the stipulated sanctions for convicted drug offences of possession and trafficking in accordance with the MDA 1971.

Table 1: Penalties for Drug Offences under the Misuse of Drugs Act 1971

OFFENCE	Level of Court	Class A Drugs	Class B Drugs	Class C Drugs
Possession	Magistrates	6 months jail and £2000 fine	3 months jail and £2500 fine	3 months jail and £500 fine
	Crown	7 years jail and unlimited fine	5 years jail and unlimited fine	2 years jail and unlimited fine
Trafficking	Magistrates	6 months jail and £2000 fine	6 months jail and £2000 fine	3 months jail and £2000 fine
	Crown	Life jail and unlimited fine	14 years jail and unlimited fine	5 years jail and unlimited fine

The Controlled Drugs (Penalties) Act 1995 reinforced the MDA 1971 and particularly extended the jail term for street drug dealing and trafficking of narcotic drugs of the value one million from 12 to 14 years as in *R v Aramah (1982) 4 Cr. App R (S) 407* and in *R v Belinski (1987) 9 Cr App R (S) 360* it was held that jail term for same value illicit drugs is minimum of 14 years jail term. The Customs and Excise Management Act 1979 (CEMA) and the Misuse of Drugs Act 1971 have been the major governing laws regarding drug trafficking in the United Kingdom. In 1994, the Drug Traffickers Act was enacted to compliment the other two previous laws. The legal penalties under CEMA are exactly the same as those under the MDA 1971 except that the fines can be heavier according to the financial value of the drugs found with the suspect at the time of arrest.

The Drug Traffickers Act 1994 and the Drug Trafficking Offences Act 1986 permits the law enforcement agencies to seize the assets suspected drug trafficker and, the Proceeds of Crime Act 2002 (PCA) made provision for the recovery of drug traffickers' assets in the civil and criminal courts where there are proofs that the assets are proceeds of crime. Under the PCA 2002, the burden of proof is with the suspect, who has to prove that the confiscated assets are not the proceeds of crimes otherwise, the court may grant order for confiscation.

The Drugs Act 2005 provides for mandatory drug testing on arrested suspected drug offenders and authorise the law enforcement agencies to detain suspects in custody for up to 192 hours to make it possible for the recovery of evidence for example where there is reasoning grounds to believe that the drug trafficker is concealing the evidence internally. Under such circumstances, the DA 2005 authorises the use of x-ray or ultrasound scanners to investigating the suspects' internal organs. Where the suspect refuses to be examined internally, the DA 2005 allows the jury or the court to infer that the suspect is guilty of internally concealing the evidence.

RESULTS AND DISCUSSION

The United Kingdom is member of many international organizations concerned with tackling drug trafficking including the Commission on Narcotic Drugs (CND) (an organisation in-charge of monitoring the implementation of the United Nations drugs Conventions and the Financial Action Task Force (FATF) (established in 1989 by the G7 for developing adequate international measures to preventing money laundering).

In a large number of countries that subscribes to the UN Drugs Convention 1988, tend to impose lengthy jail terms to convicted drug traffickers however, most of the countries applies the criminal standard of proof in the trial of suspected drug traffickers but in the United Kingdom, the civil standard of proof is acceptable by the court in reaching the verdict of guilt and for the conviction of drug trafficking suspects which subject of intense scrutiny for example Henham (1994) argue that the use of civil standard to deciding criminal cases "has been at the expense of attenuation of offenders due process rights" and that "there are several major erosions of due process discernible in the Drug Trafficking Act 1994" as in *R* v *Dickens (1990) 12 Cr App R (S) 191* where the court passed judgement based on the provision of Section 2(8) of the DTA 1994 which requires the civil standard of proof to be used to determine whether the defendant benefited from drug trafficking and also used to determine the amount to be recovered from the assets of the defendant.

In *R v Winters [2008] WLR (D) 387* the court of Appeal applied the civil standards of balance of probability in reaching its decision on criminal matter. In determining whether the defendant benefited from drugs trafficking offence, the prosecution was required to prove that monies paid by the defendant towards mortgage were made from the benefits of drug trafficking. Following the case of *R v Dickens [1990] 2 QB 102* the court held that so long as there is prima facie evidence of expenditure by the defendant since the beginning of the relevant period, the judge can assume that it was met out of payments received by him from drug trafficking and by failing to prove on the civil standards of probability, the prosecution case for confiscation of property had been reduced by £18,193.52 being the amount of money it claimed had been paid as mortgage, however, the court failed to rule that the said property of the defendant was not a benefit of drug trafficking.

The lowering the standard of proof and, the provisions of section 2(8) of DTA 1994 is incompatible with Article 6 ECHR in that it severely diminishes some of the fundamental rights of the defendants in criminal trials. It violates the fundamental freedom of human rights which guarantees fair hearing and fair trials. It therefore fails to comply with the test of *"strict necessity"* as in *Van Mechelen v Netherlands [25 EHRR 647 paragraph 58]* or test for *"minimal impairment"* as in the case of *R v Oakes [1986] 1 SCR 103*. In rare circumstances, the UK courts do acknowledge that the shifting of the burden of proof to the defendant is contrary to legal tradition, for example, in *R v Lambert and others [2001] 2 WLR 211* the Court of Appeal expressed that the modification of the burden of proof is a departure from the "*golden thread"* which has been the main principle of English criminal law for years as

in *Woolmington v DPP [1935] AC 462, 481* where Viscount Sankey LC remarked that, "the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused is charged".

The UK courts exploits the loophole in section 3 of the European Convention on Human Rights which permits national courts to interpret legislation "so far as it is possible to do so" in a way which is compatible with the ECHR. For instance, in *Lambert,* the House of Lords attempted to clarify that, though section 28 of the Misuse of Drugs Act 1971 imposes the 'legal burden' of proof on the defendant; the burden is only "*evidential burden*" which does not violate the due process of the law.

Despite the lowering of standard of proof, the imposition on the accused of reverse burden requiring the defendant to prove that the confiscated assets are not proceeds of crime violates the presumption of innocence in that the assumption that the defendant's entire assets are proceeds of criminal conducts based on the existence of "probable cause" instead of the traditional "reasonable doubt" in the minds of the jury/court is incompatible with the provision of Article 6 European Convention on Human Rights which requires the courts to ensure fair hearing and fair trial of the accused. This argument could be substantiated by *Allenet de Ribemont v. France A 308 (1995) 20 EHRR 557* where the European Court of Human Rights held that the mandatory obligations of Article 6(2) applies to both the courts and national public authorities.

The United Kingdom courts are unmindful of *Allenet de Ribemont v. France* for instance, in *R v Briggs-Price [2009] UKHL 19,* Mr. Briggs-Price appealed against a confiscation order following his conviction of conspiracy to import heroin into the United Kingdom. The court acknowledged that the Drug Trafficking Act 1994 provides that the civil standard of proof only applies to the questions as to whether the Appellant derived any benefits from drug trafficking; whilst the criminal standard of proof applies to the questions as to whether the Appellant had committed a specific drug trafficking offence. But, held that confiscation order is permissible against Mr. Briggs-Price under the Drug Trafficking Act 1994 and, that it was irrelevant as to whether the Appellant (Mr. Briggs-Price) benefitted from drug trafficking to which he was charged and irrelevant of whether the importation of the drugs did not take place.

Though the UK court continue to ignore the ruling in *Allenet de Ribemont v. France*, in *R* v *Aroyewuni [1994] Crim. LR 695* the Court of Appeal continued with the use of probable cause proof though amended the sentencing guidelines of to the importation of Class A drugs by declaring that the use of street value to weighing custodial terms was no longer applicable. There is a lot of sentencing inconsistencies in drugs related cases in the United Kingdom making it one of the most strangest legal system in the European Union for example, in *R* v *Gallagher (1990) 12 Cr App R (S) 224* it was held that the possession of illicit narcotic drugs for personal use is not trafficking and the custodial sentences should not exceed twelve months and should be at least six months. In *R* v *Jones (1981) 3 Cr App R (S) 51* it was held that the sanction for possession of drugs should be a fine without custodial sentence.

In the centre of the controversies surrounding the lowering of standard of proof and the shifting of burden of proof in drug trafficking cases is the crucial issue of the United Kingdom civil assets recovery system. The UK Assets Recovery Regime (ARR) compound the provisions of many laws including - the Proceeds of Crimes Act (POCA) 2002; Drug Trafficking Act 1994; Criminal Justice Act 1988 (as amended by the CJA 1993); and the CEMA 1979. It is import to note that, Part 1 of Proceeds of Crimes Act 2002 established an agency known as the Assets Recovery Agency (ARA).

The Act also empowers the ARA with the role of conducting criminal restraint and confiscation proceedings and also to train financial investigators. Part 2 of Proceeds of Crimes Act 2002 authorises the Crown Courts to issue confiscation orders; the Act thus, makes the Crown Court the foremost place for confiscation proceedings and all matters related to assets recovery related offences with effect from 24 March 2003. Part 5 of Proceeds of Crimes Act 2002 provides that cash could be seized from suspects inside the UK modifying previous legislation which only required cash to be seized at the ports of entry and departure.

Assets recovery in the UK is of two segments – "forfeiture order" and 'confiscation order" (Lea, 2004). Where forfeiture order is granted to the prosecution, the defendant is permanently stripped of his title to property on the order hand, if a confiscation order is issued against the property of the defendant, he will not be stripped of his title to his property but will be required to pay some amount of monies in the form of a fine; however, the prosecution can make further application to the court for forfeiture otherwise, in the event that the defendant successfully overturns the confiscation order, the court will not grant forfeiture order. Under the present legal regime, the UK court has the power to make a confiscation order in cash and, where necessary, the court imposes jail term in default.

However, defendant is entitled to seeking reduction of the confiscation order made under s. 17 of the Drug Trafficking Act 1994 and the Criminal Justice Act 1988 s. 83 provided the there is reasonable grounds to substantiate that the amount to be realised from the confiscation is likely to much lesser than the actual value of that assessed by the Crown court; though, it is not straightforward matter for the defendant in that, he must apply to the High court for a certificate of inadequacy with which he can apply to the Crown court to reduce the amount of confiscation, and if the amount is in default, the reduced amount will reduce the jail term of the defendant.

In order for the law enforcement to be able to gather evidence in pursuing the assets of the defendants, section161 of the CEMA 1979 empowers the law enforcement agencies including custom officials to enter and search premises without the need for search warrants. The entry could involve the breaking and opening of doors, windows and containers, forcing and removing any obstructions in the process. The entry can be justified only if the law enforcement officers have reasonable grounds to suspect that anything liable to forfeiture and/or confiscation is kept or concealed in the premises (Dorn, 1999). The breaking and entry of the property of the suspect based on mere suspicion violates the rights to private and

family life contained in Article 8 of rights. In some instances, the act may not sufficiently pass the "proportionality test" contained in the European Convention on Human Rights.

One worrying aspect of the civil assets recovery regime in the UK is that, it can still be executed irrelevant as to whether the defendant is found guilty of the offence of drug trafficking and/or drug possession. The Proceeds of Crimes Act 2002 also authorizes the Assets Recovery Agency to "compel a person" to give answers to questions and to provide all information and documents in his possession (Dorn, 2004). Where the defendant/suspect fails to comply with the ARA, the agency can make negative inference in the court and only require the proof on the civil standard (balance of probabilities).

The Proceeds of Crimes Act 2002 has three main objectives namely: Confiscation of the proceeds of crime after conviction; the confiscation of assets that are arguably aiding the criminal activities; and, taxing the benefits derived from proceeds of crimes.

The use of coercion by the Assets Recovery Agency to obtain confessional statements from the suspects is incompatible with Article 6 of the European Conventions on Human Rights (ECHR) and Article 10 and Article 11(1) of the United Nations Universal Declaration of Human Rights (UDHR) which states:

> "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him".

And Article 11(1) UDHR states that:

> "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence".

The compelling of suspects to give evidence is a dent on the long standing legal principle of the rights to silence for example, in *Brown v HM Advocate [1966] SLT 105* it was held that the "express right contained in a human rights instrument is largely non-negotiable" and in *Teixera de Castro v Portugal* 28 EHRR 101, paragraph 36; the European Court of Human Rights held that no policy no matter how commendable is fit to pass the test of legal scrutiny "if its ultimate effect is to dilute fair trial rights" and, in *Matthews v UK* [1999] ECHR 24833/94 the European Court of human Rights court ruled that, international treaties that are passed in the aftermath of the ECHR cannot be interpreted so as to limit convention rights (Kingston, 2006). The convention rights it seems can only be infringed where the test for proportionality is passed. In *de Freitas v Ministry of Agriculture [1998] 3 WLR 675, 684* the court outlined threefold *test for proportionality* inter alia:

(i) Whether the legislative objective is sufficiently important to justify limiting a fundamental right;

(ii) Whether the measures designed to meet the legislative objectives are rationally connected to it; and

(iii) Whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective (Kingston, 2006).

In view of the tests in *de Freitas,* I argue that the UK asset confiscation system "is irrational and devoid of proportional reasoning" (Kingston, 2006) for example in *R v Michael Tivnan [1998] EWCA Crim 1370* the Court of Appeal said that, the Drug Trafficking Act 1994 is draconian because (i) there is no time limit for the prosecution to apply for variation of confiscation orders and, (ii) drug trafficking forfeiture orders are not restricted by any requirement that the defendant's realisable assets must be proved to be directly derived from drug dealing or over the period of drug dealing but only by the amount of the total value of the benefits the defendant has derived from drug dealing and the realisable value of his assets at the time of the order or any further order (Kingston, 2006)**.**

The UK drug trafficking laws including the new assets recovery regime enable the State to manipulate the trial processes in contravention of the laid down standards of various international human rights instruments, for example, the new principle of "*reasonable grounds of belief*"; and the "*mere suspicion"*' which is inferred as probable cause gives the law enforcement agencies enough powers to seize an individual's personal assets with the support of the judiciary; as in *R v Montila and others [2003] EWCA Crim 3082* where the court ruled that, on the true construction of s 49(2) of the 1994 Act it was not necessary, in order to prove an offence under the subsection, that the property concealed or disguised, converted, transferred or removed from the jurisdiction was the proceeds of drug trafficking or crime. The target of the subsection was as much the *state of mind* of the defendant as his conduct (Kingston, 2006).

The United Kingdom legal system is fast becoming totalitarian as the will of the State is superseding the well establish human rights. For instance, *Liberty* (2001) submitted that the current system of "criminal confiscation system not only destroys the essence of the presumption of innocence" and also that, with regards to civil confiscation, it is improper for the laws to authorise "the state a power to opt for extensive confiscation of defendant's assets in circumstances where it does not have sufficient evidence to prosecute them in the criminal courts" and that "assuming that there is sufficient evidence to prosecute them, it would be wrong to allow the state to opt for an easier path of pursuing someone in the civil courts".

The very contentious assets recovery regime is traceable to the ancient system of feudal forfeiture "*in rem"*- a legal procedure which focused on the criminal nature of property rather than the criminal conduct of the owner of the property for example in a very ancient case of *United States v. La Vengeance 3 Dallas 297 (1796)* the United States Supreme Court ruled that the seizure of the French ship carrying illegal arms was case of admiralty law which the cause was civil and that the matter was rested *in rem* and excluding the person of the defendant.

CONCLUSION

The implications of the drift towards retribution and deterrence in the sentencing policy for drug traffickers are all too apparent. The increased numbers imprisoned will contribute to an already grossly overcrowded and deteriorating prison situation and drug related crime will increase (Henham, 1994).

This study has assessed aspects of drug policy enforcement within the context of United Kingdom legal framework, International Human Rights and international drug conventions. Although the study demonstrates that the United Kingdom is heavy handed in the control of drug trafficking, nevertheless the UK has been able to formulate and implement domestic drug control policy in a way that furthers harm minimization in relation to the availability of illicit drugs. The United Kingdom has also retained rooms to manoeuvre within the UN conventions (Dorn, 2004).

This study has drawn attention to the intersection between domestic drug policies and international drug policies, particularly in relation to implementation policies. Whilst there is no apparent mismatch between the United Kingdom domestic drug policy and international policy goals, the latter face strong challenges. On one hand, there is at least some potential for reasonable progress to be made at home. On the other hand there is the possibility of being completely overwhelmed by abject failures internationally. At the heart of this conundrum is the still evolving relationship between 'supply reduction' and drug policies (Dorn, 2004).

Supply reduction will tend to be short-lived unless effective action is also taken to address the demand-side (for example, through drug treatment or effective prevention programmes). This is a matter of basic economic laws. If levels of demand are constant, a reduction in the supply of a drug will drive up the street price and make it more profitable for drug traffickers. If people with serious dependency problems are not being treated, they are unlikely to give up using illicit drugs. A similar point applies to the United Kingdom international initiatives towards reducing the production of drugs in Afghanistan, so long as demand for opiates subsist, successful initiatives to cut opium cultivation in one area will always lead to an increase in production elsewhere.

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