

Chapter VI

STATE ACTS ON HABITUAL OFFENDERS

State enactments

Several state legislatures have passed special laws for regulating the conduct, and restricting the movements, of habitual offenders. The Delhi Administration does not have its own law on the subject, it has extended the application of the Madras Restriction of Habitual Offenders Act, 1948. However, Delhi has its own Police Act which contains, *inter alia*, provisions concerning habitual offenders and which has been referred to earlier.

The present position with regard to the enactment and operation of the special laws on habitual offenders by the various states is as under :

(a) Nine states have enacted their own legislation on the subject and have put the same into operation. [Table 6. 1, *infra*].

(b) The Union Territory of Delhi has extended the Madras Act of 1948, in addition to its recently enacted Police Act. [Table 6. 2, *infra*].

(c) The State of Orissa and the Union Territory of Goa, Daman and Diu have laws on their statute books, but the governments of the respective states have not yet enforced the same. [Table 6. 3, *infra*].

(d) Eighteen states have not yet enacted any special law on the subject. They leave the matter to the provisions of the Code of Criminal Procedure and the Police Act. [Table 6. 4, *infra*].

(e) The State of Uttar Pradesh, having passed a law on the subject, has chosen to repeal it. [Table 6.5, *infra*].

The position in this regard is set out below in the form of five Tables.

Table 6. 1

<i>States union territories which have enacted a law on habitual offenders. State U.T.</i>	<i>Title of the Act¹</i>
1. Andhra Pradesh	Habitual Offenders Act, 1962.
2. Gujarat	Habitual Offenders Act, 1959. (Bombay Act of 1959, which continues to be in force in Gujarat).
3. Haryana	Restriction of Habitual Offenders. Act (Panjab Act 5 of 1918, which continues to be in force in Haryana).
4. Karnataka	Habitual Offenders Act, 1961.
5. Kerala	Habitual Offenders Act, 1960.
6. Maharashtra	Habitual Offenders Act, 1959 (Bombay Act of 1959 which continues to be in force in Maharashtra).
7. Punjab	Restriction of Habitual Offenders Act (Punjab Act 5 of 1918), supplemented by the Punjab Habitual Offenders (Control and Reform) Act, 1952.
8. Rajasthan	Habitual Offenders Act, 1953.
9. Tamil Nadu	Restriction of Habitual Offenders Act, 1948 (Madras Act of 1948, which continues to be in force in Tamil Nadu).

Table 6.2

<i>Union territories which have extended a state law on habitual offenders</i>	
1. Delhi	(Madras) Restriction of Habitual Offenders Act, 1948, as extended to the Union Territory of Delhi.

Table 6. 3

<i>States union territories where a law on habitual offenders has been passed but not yet put into force</i>	
1. Goa, Daman & Diu	Habitual Offenders Act, 1976.
2. Orissa	Habitual Offenders Act, 1952.

1. For brevity, the name of the state as forming part of the short title of the enactment has been omitted.

Table 6.4*States/union territories which have not enacted a law of habitual offenders*

1. Andaman & Nicobar Islands
2. Arunachal Pradesh
3. Assam
4. Bihar
5. Chandigarh
6. Dadra & Nagar Haveli
7. Himachal Pradesh
8. Jammu & Kashmir
9. Laccadive Islands
10. Madhya Pradesh
11. Manipur
12. Meghalaya
13. Mizoram
14. Nagaland
15. Pondicherry
16. Sikkim
17. Tripura
18. West Bengal

Table 6.5*States where a law on habitual offenders, having been once passed has been repealed*

1. Uttar Pradesh

The pattern

As noted above, the state laws on habitual offenders present a broadly similar pattern. Each Act is divided into four parts, (i) the preliminary part, where the definition of "habitual offender" is to be found; (ii) the registration of habitual offenders and the procedure to be followed therein; (iii) the restriction to be imposed on their movements, and (iv) provisions for corrective training of the habitual offenders. The Act also prescribes penalties for non-compliance with the requirements imposed under the Act on an habitual offender. The various types of offenders envisaged by the state laws will be discussed in due course in a later chapter.²

2. See chapter VII *infra* relating to classification of offenders.

Panjab and Madras Acts

Chronologically, the Panjab Act on Habitual Offenders of 1918 (Panjab Act 5 of 1918) is the first local Act on habitual offenders. This Act has been largely followed by other states. The Act aims at putting restrictions on the movement of the habitual offenders in the state. The Act requires that a person declared as habitual offender should report to the local authorities about his being present in an area. In case the authorities consider that his presence should be subjected to restrictions it may pass such an order. Thus, (i) the order may notify the prescribed limits of movement and impose other conditions restricting the movement of the offender. (ii) The order may require an offender to report his presence periodically, at such places, as the order may prescribe. These measures are meant to have a meaningful control over the activities and conduct of the habitual offender.

The Panjab Act of 1918 also contains provisions for initiating proceedings under section 110 of the Code of Criminal Procedure with a view to binding over a habitual offender for good behaviour for a limited period of time.

The Panjab Act of 1918, while it legitimises the placing of restrictions on the movements of the habitual offender, prescribes a procedure that places the administrative action at par with the furnishing of a bond for good behaviour, as both are processed in a manner which conform to the established procedure prescribed for judicial action.

The subsequent Panjab Act, *viz.*, the Panjab Habitual Offenders (Control & Reforms) Act, 1982 supplements that Act of 1918 by providing for the correction, treatment and rehabilitation of the habitual offender.

It may, incidentally, be mentioned that these Acts continue to be in force in the States of Panjab and Haryana after the re-organisation of the areas which formerly constituted part of the State of Panjab.

Next in the chronological order is the Madras Restriction of Habitual Offenders Act, 1943. The Act empowers the district magistrate to notify habitual offenders and impose restrictions on them. It requires that a person proposed to be notified as habitual offender must be given a reasonable opportunity to show cause against the issue of an order. It is incumbent upon the offender notified under the Act to intimate his place of residence to the authorities. Restriction on the movement is placed after giving due consideration to the nature of the offences of which the offender had been convicted in the past, along with the circumstances in which these were committed. The question whether the offender has been usefully engaged in a lawful vocation or not is also

pertinent, and enables the authorities to determine the nature and extent of restrictions to be imposed on movement of the habitual offender.

The state government is empowered to place the notified offenders in one or the other industrial, agricultural or reformatory settlements set up by the government for the purpose. The Madras Act is thus the fore-runner of the penological thought in India which envisages a correctional approach for dealing with habitual criminals, and seeks to implement the same by adopting rehabilitative measures. In essence, the Madras Act of 1948 paved the way for the enactment by other state legislatures of laws incorporating the theory of reformation of the offenders in this context.

Other states

All other state enactments concerning the habitual offenders are the products of the post 1952 era. The spurt in legislation on the subject arose mainly as a result of the passing of the Criminal Tribes (Repeal) Act, 1952 which repealed an earlier local Act that had provided for control over criminal tribes. At about the same time, a model Bill on the habitual offenders was also circulated by the central government. This model Bill was meant to be a guideline for the states that desired to enact a law on the subject. The similarities in the various state laws on habitual offenders with regard to the scope and general scheme of the legislation and its substantive contents suggest that the model Bill had been the source of inspiration of legislation on the subject passed by various states after 1952.

Regulatory provisions

It is unnecessary for the present purpose to give a detailed summary of all the provisions contained in various state Acts. However, it may be mentioned that regulatory provisions constitute the most important part of the state Acts, followed by provisions for correctional settlements. The following list of the topics dealt with in one of the latest state Acts³, in its important regulatory provisions, may give a concrete picture of the gist of such provisions:

Topics dealt with in the Karnataka Act of habitual offenders

Regulation

3. Power of state government to direct registration of habitual offenders.

3. The Karnataka Habitual Offenders Act, 1961 (24 of 1961). The Arabic numbers indicate the relevant sections of the Karnataka Act.

4. Issue of notice to habitual offenders and enquiry regarding entries to be made in the register.
5. Charge of register and alterations therein.
6. Power to take finger impressions, *etc.* at any time.
7. Registered offenders to notify every change of residence and to report themselves.
8. Action to be taken when a registered offenders changes his ordinary residence.
9. Duration of registration, cancellation thereof and re-registration of habitual offenders.

(Restriction on movements)

10. Right to make representations against registration and re-registration, *etc.*
11. Power to restrict movement of a registred offender.
12. Power to cancel or alter restrictions on movement.
13. Establishment of corrective settlements.
14. Power to direct habitual offender to receive corrective training.
15. Power to transfer from corrective settlement.
16. Penalty for failure to comply with certain provisions of the Act.
17. Arrest of person found outside restriction area of corrective settlement.

Case law on state Acts—Panjab.

During the '20s and '30s of the present century, a number of interesting points relating to the provincial Acts relating to habitual offenders came to be decided judicially and some of these points can usefully be mentioned here. Thus, with reference to the Panjab Act of 1918, it has been held that an order under that Act cannot be passed on a mere suspicion of complicity of a person in isolated offences, particularly where evidence about his general character and reputation is not very strong.⁴ An order of restriction under section 7 of the Panjab Act cannot be made against a person against whom an order under section 118 of the Code of Criminal Procedure, 1898 has been made.⁵

4. *Ahmad v. Emperor*, A.I.R. 1926 Lah. 803.

5. *Bhana v. Emperor* A.I. R. 1919 Lahore 87.

Where a person is required, under section 118, of the Code of Criminal Procedure, to furnish security for good behaviour, it is illegal to make an order restricting his movements at the same time under section 7, of the Punjab Restriction of Habitual Offenders Act.⁶

The Punjab Restriction of Habitual Offenders Act only provides for a higher penalty for offenders who are found to be incorrigible. A district magistrate in appeal has jurisdiction to substitute an order under section 110, of the Code of Criminal Procedure for that passed by the trial magistrate restricting a certain person proceeded against under the Punjab Restriction of Habitual Offenders Act. The reasoning on which this decision is based seem to be the assumption that the procedure under the Punjab Act is the same as that under section 110 of the Code of Criminal Procedure.⁷

Bombay regulation

Section 27 of the Bombay Regulation (12 of 1827), which is relevant to the subject, has also yielded some important cases. Under section 27 of the regulation, security can be taken for good behaviour. It has been held that a notice, under section 27 of the regulation, can be issued only after proceedings have been taken against each person individually under chapter VIII of the Code of Criminal Procedure, 1898; and it is only on his failure to furnish security under that chapter that the restrictions mentioned in the latter half of the section can be enforced and that too, with the assent of the accused person.⁸

The conditions necessary for taking action under the Bombay regulation have also come up for judicial discussion.⁹

Burma Act

Equally interesting is case law on the Burma Habitual Offenders Restriction Act (2 of 1919). Thus, the scope of the Act has been discussed in one case.¹⁰ The procedure laid down in section 117 of the Code of Criminal Procedure is to be followed in taking action under the Burma Act.¹¹ Evidence is to be recorded in the presence of the accused.¹²

6. *Kabir Baksh v. Emperor*, A.I.R. Lahore 330.

7. *Khuda Yar v. Emperor*, A.I.R. 1929 Lahore 815.

8. *Emperor v. Gahina Kom Babajee*. 7 Bom. L.R. 456 (1905).

9. *Emperor v. Narayan Beldev Patwa*, (1906)3 Cri. L.J. 383 (Bom.).

10. *Emperor v. Po Maya* A.I.R. 1920 Low, Bur. 135, 136.

11. *Parsodan v. King Emperor*, A.I.R. 1925 Rang. 69, 70.

12. *San Dun v. King Emperor*, A.I.R. 1925 Rang 112.

Nature of the evidence required has been dealt with in another cases.¹³ An order confining a man to the four corners of his house has been held to be bad under the Burma Act.¹⁴

It has been held that a double order under section 7 of the Burma Act and section 118 of the Code of Criminal Procedure, 1898 cannot be passed.¹⁵ This ruling takes a view similar to the view taken under the corresponding provision in the Panjab Act on this point.¹⁶ It has also been held that merely being an "old offender" is no ground for passing an order under the Burma Act.¹⁷

Sind regulation

It appears that the Sind Frontier Regulation 13 of 1892 also provide for orders to be passed by the district magistrate requiring security. The court of the Judicial Commissioner of Sind, it has been held, has no jurisdiction to interfere in revision with an order made by a district magistrate under section 20 (1) and 24 (1) of the Sind Frontier Regulation, requiring a person to furnish security for good behaviour.¹⁸

U.P. Goondas Act

Recently, section 3 (1) of the U. P. Control of Goondas Act (U.P. Act 8 of 1971) has come up for construction.¹⁹ The Act, it has been pointed out, is extra-ordinary in nature. Its provisions permit serious inroads on the liberty of the citizen, as they provide for the externment of a citizen without a judicial trial. The Act provides slender safeguards to a citizen. In such a situation, the question of liberal construction of a notice issued by the executive authority under section 3 does not arise. A notice not setting out the general nature of the material allegations (as required by the mandatory provisions of the section), therefore, renders the proceeding void for non compliance with the Act.

13. *Nga Pan Yin v. King Emperor*, A.I.R. 1924 Rang. 22,

14. *Nga Ba Sein v. King Emperor*, A.I.R. 1923 Rang. 102, 103.

15. *Pan Zyaw v. King Emperor*, A.I.R. 1923 Rang. 134.

16. *Bhana v. Emperor*, A.I.R. 1919 Lahore 87.

17. *Nag Po Than v. King Emperor*, A.I.R. 1925 Rang.277; *Nag Tha Bay v. Emperor*, A.I.R. 1925 Rang. 279.

18. *Bhawal Khan v. Emperor*, A.I.R. 1929 Sind 51.

19. *Ramji Pandey v. State of U.P.*, 1981 Cri.L.J. 1083 (F.B.) (All.).