

## Chapter VII.

# CLASSES OF HABITUAL OFFENDERS UNDER STATE ACTS

### I. General view and rationale

In order to appreciate the scope and application of the state dealing specifically with habitual offenders, one has to examine the offences covered by these enactments which confer upon an offender the status of "habitual offender." These offences are quite large in number. Generally, it is assumed that the *dangerous criminality* of an offender furnish the base for separating an ordinary offender from a hardened one. The dangerousness usually pertains to the offender's capacity to disturb peace and order in the community by the commission of anti-social acts. From this point of view the inclusion with in these enactments of offences (of a certain severity) relating to human body and property may be justified. However, this rationale would not, in itself, justify the inclusion in this category of such offences as counterfeiting of coins and government stamps and delivery of counterfeit coins and stamps. These offences are committed in utmost secrecy without causing any ripples in the tranquility of the community or any disturbance to public order. They stand in a somewhat different category from murder, extortion and robbery. Presumably, they are included in the state laws dealing with the habitual offenders because greed and similar vices (which are the spring of these crimes) are found to breed a repetitive criminal conduct and the repetitive criminal conduct is generally considered proper for being dealt with by special legislation. In this context, these enactments seem to follow the rationale underlying section 110 Code of Criminal Procedure—a provision which is regarded as justified, *inter alia* on the principle that special measures are needed to check the repetition<sup>1</sup> of crime by dangerous criminal.

Some states include in these special enactments offences under the Arms Act also. Some of the states have included in the list other anti-social acts such as bootlegging, gambling, immoral trafficking in women and girls<sup>2</sup> and the like. In doing so, the primary aim of the state legislature has been

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1. Cf. *Nawab* (1880) I.L.R. 2 All. 835; *Jaffar*, A.I.R. 1933 All. 650. in *Rathinam Pillai*, A.I.R. 1938 Mad.35, 37; 39 Cri. L.J. 230.

2. For instance, the Madras Restriction of Habitual Offenders Act, 1948.

to enable the police to employ the special coercive machinery created by such laws to deal with occupational crimes of a socio-economic nature. However, one may be permitted to observe that the legislatures of these states seem to have put rather an onerous obligation on the police for combating socio-economic evils. In fact, doubts have often been cast as to the mere efficacy of even ordinary penal legislation in curbing socio-economic crimes. These doubts, if sustainable, acquire strength when the offenders in question are sought to be placed in the category of "habitual offenders" and sought to be dealt with by coercive measures of special intensity.

Besides the above, the persons who were proceeded against and were bound down on the proceedings under section 110 of the Code of Criminal Procedure are also described as "habitual offenders" in some state laws.

Incidentally, it may be stated that the definition of "habitual offender" under the various Acts of the states remains substantially the same in each state law, whether the law was enacted before or after the circulation of the model bill of the central government on the subject.

#### **Offences covered by state laws-Broad enumeration**

A perusal of the list of the scheduled offences in state acts indicates that the schedules have mostly included offences contained in chapters XII, XVI and XVII of the Indian Penal Code.<sup>3</sup> Some state statutes have included in the schedule other offences as well, e.g. (a) living on the earning of prostitution<sup>4</sup> (which finds place in the laws of all the states which have enacted legislation on the subject except the Madras Restriction of Habitual Offenders Act and (b) offences under some local laws, e. g. laws relating to prohibition and gambling.

#### **State Police Acts**

Besides these, the state Police Acts have supplemented the list further by including some other categories of offenders, e.g. vagrants, beggars, drug pushers, and the like.

#### **Analysis and grouping**

For a more concrete understanding, the offenders covered by state laws regarding habitual offenders may be grouped as under:-

3. For instance, the Madras Restriction of Habitual Offenders Act, 1943.

4. *Ibid.*

1. *Offenders against personal liberty*: Under this category falls offenders guilty of kidnapping or abduction or allied offences or their aggravations.<sup>5</sup>
2. *Offenders who tend to disturb the peace and order of the community* : These are offenders who do so by (a) repeatedly engaging in the commission of offences involving breach of peace, either directly or by abetment; (b) high-handed acts of desperate and dangerous characters.
3. *Offenders committing offences against property* : Offenders committing (a) theft, dacoity, house-breaking and allied offences,<sup>6</sup> (b) extortion<sup>7</sup>, cheating, forgery or mischief.
4. *Aids and auxiliaries of offenders against property*: Offenders who habitually (a) give protection and shelter to thieves ; (b) assist in the concealment of stolen property ; or (c) receive and dispose of stolen property, knowing the same to be stolen.
5. *Economic offenders* : Offenders who habitually commit (a) offences relating to coins,<sup>8</sup> government stamps, bank notes and currency notes ; (b) offences under laws relating to essential commodities or laws against hoarding, profiteering and allied subjects ; or (c) offences under laws regulating foreign exchange or laws relating to customs duties.
6. *Social legislation* : Offenders who repeatedly transgress the provisions of specified social legislation, such as laws dealing with (a) beggary ; (b) gambling ; (c) prohibition ; (d) prostitution ; (e) protection of civil rights (untouchability) ; or (f) similar anti-social acts that have their genesis in deep-rooted social prejudices requiring firm action.

5. For instance, (a) the Karnataka Habitual Offenders Act, 1961, Schedule A, entries relating to sections 347, 365, 366A, 366C, 368 and 369, I.P.C.  
(b) the Madras Restriction of Habitual Offenders, Act, 1948, Schedule, entries relating to sections 347, 363A, 365, 366A, 366B 368 and 369.
6. For instance  
(a) the Karnataka Habitual Offenders Act, 1961, Schedule A, entries relating to these, robbery, dacoity/ house-breaking and their aggravations.  
(b) the Madras Restriction of Habitual Offenders Act, 1948, entries relating to theft, robbery, dacoity, house breaking and their aggravations.
7. For instance the Karnataka Habitual Offenders Act, 1961, Schedule A, entries relating to extortion.
8. For instance, the Karnataka Habitual Offenders Act, 1961, Schedule A, entries relating to chapter XII I.P.C.

7. *Other legislation* : Offenders who commit offences under certain welfare legislation such as, legislation relating to provident fund.

### **The unifying thread**

The number and variety of offences covered by the state enactments naturally raise, in the minds of any eager researcher, the question whether any unifying thread can be discerned as forming a link between them. On some reflection, it appears to be possible to reduce the bewildering variety of offenders who are usually regarded as "habitual offenders" (in the state laws) to three broad categories :

- (a) Persons who are potential and perennial *sources of danger* to the lives or properties of the members of the community and are therefore likely to impair the peace of the community. Their dangerousness may be evidenced by their,
  - (i) repeated commission of offences under the Indian Penal Code,
  - (ii) repeated commission of offences under special Acts, such as Arms Act, or,
  - (iii) prior involvement in proceedings under section 110, Code of Criminal Procedure.
- (b) Persons who damage the *exercise of sovereignty* by engaging in the counterfeiting of currency and forging of stamps and related activities—activities which, in a sense, amount to an attempt to run a parallel government on the economic side.
- (c) Persons who persistently violate *economic or social legislation*, thereby undermining the efforts of the society at large to eliminate deep rooted economic or social evils.

These also, in a sense, constitute an attempt to create and run a parallel economy which is detrimental to the resources of the nation.

The apparent and direct victims of these offences may be said to be the individual, the government and the society at large, respectively. But the unifying thread seems to be the need to protect the *social order* against persistent attacks and to check the emergence of a parallel society. Differential treatment of the offences or offenders for being placed in the special category of "habitual" is based on some such rationale even though the rationale is not articulated in the relevant laws and may not even have been apparent to the legislators themselves.

### **Analogy of section 110 Cr. P C.**

If one is to search for a common principle underlying the selection of offences that are to rank as suitable for being dealt with by special

legislation, one can find it in section 110 of the Code of Criminal Procedure, 1898 which is re-enacted in section 110 of the Code of Criminal Procedure, 1973. In fact, the most comprehensive provision which seeks to delineate the types to be designated as "habitual offenders" is still to be found in this section of the Code. Special and local laws seem to have followed the pattern set out in that section, and many of the offences selected by them can be fitted well within the wider conspectus envisaged by this section. The offences embraced by the special and local laws may, no doubt, vary in detail, when one places them in juxtaposition with the offences listed in section 110 of the Code. But some point or other for drawing an analogy with section 110, Cr. P.C. will usually be found.

Thus, to take the three broad categories of offences as grouped above are: Category (a) in which *dangerousness* of the act predominates, is matched by section 110, clauses (a), (b), (c), (e), (g), and the first part of clause (d). Category (b) is reflected in section 110 (d), latter half and also in some part of clause (f). The third element is matched by section 110 (f), in part.

#### **The requirements as to the offender**

Besides the requirement that the offence committed in the past must have been a scheduled offence, it is generally required by the state laws that certain criteria must be satisfied regarding the sentence passed and also concerning the offender himself. Thus, in most of the state laws, some common features concerning (a) the offenders (b) the offences and (c) the sentence can be found.

Broadly speaking, the essential requirements for a *habitual offender* under the state laws are :

- (i) the offender should be a person who has been sentenced in the past to a substantive term of imprisonment on a minimum number of occasions (usually, not less than three occasions) ;
- (ii) the sentences should relate to the commission of one or more of the scheduled offences ;
- (iii) the offences should have been committed within a specified continuous period (usually, five years). [The time spent in jail, either under a sentence of imprisonment or under detention, is not to be taken into account in computing the continuous period of five years :]
- (iv) the offences in respect of which such person was sentenced should not form part of the same transaction ;

(v) the offender should be of eighteen years of age or above.

In this context, the definition of "habitual offender" contained in one state Act on the subject, may be quoted;<sup>9</sup>

"(2) 'habitual offender' means a person who, during any continuous period of five years, has been sentenced on conviction on not less than three occasions, since he attained the age of eighteen years, to a substantive term of imprisonment, for any one or more of the *scheduled offences*, committed on different occasions and not so connected together as to form part of the same transaction, such sentence not having been reversed in appeal or on revision ;

Provided that in computing the continuous period of five years referred to above, any period spent in jail either under sentence of imprisonment or under detention shall not be taken into account."

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9. Section 2(e), Karnataka Habitual Offenders Act, 1961.