

## Chapter VIII

# ENROLLING THE HABITUAL OFFENDERS : THE SOURCES

### **Powers of the police-general**

The power to collect information regarding habitual offender, and to keep a record of the same is part of the duties of a police officer. The provisions in relation thereto are to be found in section 23 of the Police Act, 1861 (Central) which, *inter alia*, requires a police officer "to collect and communicate intelligence affecting the public peace." The various state laws relating to habitual offenders have mostly borrowed the language of the Act for conferring powers on their police officials.

In exercising these powers the police is to collect such information as may be tenable for preventive police action. An action contemplated in the exercise of this power would necessarily call for the maintenance of properly recorded information. Departmental regulations lay down certain directions for the collection of information and for the keeping of records. For taking necessary preventive measures, the administration follows the practice of classifying the various types of offenders into separate categories.

Maintenance of confidential records of the habitual offenders and of the bad characters is an administrative necessity, if a proper watch is to be kept over their antecedents and behaviour, on the ground that their past conduct and ill repute is sufficient to create suspicions and alarm in the minds of the community. The maintenance of records of bad characters by the police detailing their activities and behaviour is and regarded as a confidential information needed by the police officer for an efficient discharge of his duty. However, if on the basis of such a record some restrictions are imposed on the liberty of the individual, and he challenges the validity of the police action, the court may look into the records to satisfy itself that there was basis for the making of the record against the person.<sup>1</sup> It may not be denied that zeal for over-efficiency on the part of a police officer for the prevention and control of crime may sometimes create problems. However, the power has to be used with caution, and,

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1. *Malak Singh v. State of Punjab*, A.I.R. 1981 S.C. 760.

indeed, in a manner as may commensurate with the dignity of the human individual as understood in the context of the constitutional and the judicial pronouncements. In the register of history sheets, the name of the person concerned ought to be entered into only after a complete scrutiny and careful consideration of the matter.

#### **Offences covered by state laws**

As already, the laws relating to habitual offenders, passed by various states, have enumerated the offences for which restrictions on habitual offenders can be imposed. These offences are to be found in the schedule to the various laws enacted by the respective states. The type, of offence mentioned in the schedule to various Acts do not vary much except that some states have added offences under enactments like the Suppression of Immoral Traffic Act, Prohibition Act, and offences under other special or local laws. The basic purpose in drawing attention to the nature of offences enumerated in the State Acts is to point out that the exercise of the administrative power with regard to the selection of habitual offenders has to be limited to the offender's record relating to his having committed *only those offences*. The power does not give a blanket authority to enter the name of an offender for all assorted activities of criminal nature—and this is so even though the offender's misdeed might be a source of inconvenience to police authorities or an irritation to the public. Accordingly, the action of the police officer has to satisfy the condition that the person to be listed as a habitual offender is one who is reasonably believed to be habitual offender in regard to the specified offences, and that it is further believed that his activities are of such kind as may lead to secure further conviction for one of those offences with the state legislature has specifically enumerated in the Habitual Offenders Act of the state for purposes of designating the offender as an habitual one. Accordingly, preventive action may be taken to restrain him from getting further engaged in the vocation of crime. Otherwise that would be detrimental to the interests of the society. If action of the police officer in having entered a name in the list of bad characters, or history sheeters, is challenged, it would be necessary for him to show that the above noted conditions are existent in the case of the particular offender and that the same have been taken note of.

#### **Preparation of lists and safeguards against improper entries**

In the preparation of the list of habitual offenders it is essential that the facts must be considered fully. This calls for an application of the mind of the concerned authority. The decision to include, or not to include, a name must rest on authentic information culled out carefully and collected competently.

In drawing up the list of bad characters, if the administrative procedure is properly adhered to, then it can be reasonably assumed that the chances of error in the preparation of records are minimum. It is incumbent upon the police officer to investigate the matter fully before it is placed on the record. The control is largely from within. The law puts a restraint on the exercise of this power by providing that an incorrect and negligently drawn information may entail a conviction under section 29 and 55 of the Police Act, 1861. A similar fate may await persons submitting an improper report, even though the evidence against the police officer may not be sufficient as to make him liable for an offence under section 218 of the Indian Penal Code, 1861.

The safeguards which can be found to operate in exercise of the police power with regard to entering a person's name in the register of habitual offenders are thus—(i) the existence of the fact of a person being a habitual offender, (ii) his engaging in activities of the like nature, (iii) the observance of the administrative fairness in including his name for restrictive actions, and (v) a statutory provision for punitive sanction under section 29 and 55 of the Police Act, 1861 for the submission of wrong information and placing the same on the police records. Even so, it may often be very difficult for the aggrieved person to establish that the name was not entered in the police registers after due deliberation, consideration and caution.

#### **Sources for entering the names of habitual offenders in police records**

The preliminary task in the enforcement of law relating to habitual offenders is the gathering of sufficient information by the local police about the well known anti social elements residing in, or frequenting, the locality concerned. This information can be used further to identify and select the persons who appear to have attained the status of "habitual offender." This is the immediate utility. In this process, various other persons who may have shown potentialities of becoming seasoned law breakers are also drawn into the notice of the police administration, and may call for appropriate preventive action by the police. This is the ultimate utility.

As noted above, the identification and selection of the offenders is the initial step. If the police fails in this initial step, the legislative purpose of providing for curbs and restrictions of anti-social elements and thus of paving the way for the protection of society will get entirely frustrated. Though the power in this respect ultimately belongs to the district magistrate, yet it is the police which has to concern itself with the identification of these elements. Thus the role and function of the police assume extreme significance

A habitual offender is recruited in the police records from various sources. The basic source is the information that the local police possess about such persons residing in their jurisdiction. Such information in the locality is gathered about the various anti-social characters. Some of them draw further police attention by frequently resorting to the commission of the same or similar offences.

The data collected in relation to each offender is then sifted in order to find out the number of convictions of each offender, the class of persons he associates with, and his general reputation. Certain records are maintained in the police stations about persons actively engaged in criminal activities. The notorious ones are known by their history sheets. The "rowdy" elements too have their records. Then, there is the list of persons who are more suspects in the eyes of the police because of their dabbling into criminal activities or of their associating with ill-reputed persons, although they may not have necessarily been convicts in a regular way.

The supplemental sources for enrolling the habitual offenders are the list of ex-convicts and of persons released from the jail from time to time. These lists are made available to the police authorities by the respective authorities in the district.

**Ex-convict and the court power under section 360,  
Cr. P.C. and of the government under section 432**

As noted above, ex-convicts constitute the principal source for identifying and enrolling the habitual offenders. In certain cases, the courts may, at the time of conviction, pass orders under section 360 of the Code of Criminal Procedure, 1973 and impose conditions that an ex-convict shall, on his release, would submit himself to his police station for purposes of surveillance. The appropriate government may also pass such orders under the Code of Criminal Procedure, 1973.<sup>2</sup> The conditions imposed may require them to notify the addresses and to report their movements to the police for a prescribed period of time. In many cases the ex-convicts are ordered to notify the place of their residence. This is necessary for ensuring good behaviour on the part of the prisoner (after release) and also for the compliance by the prisoners with certain legal provisions in the criminal law. Where an ex-convict is conditionally released on the suspension, remission or commutation of sentence by an appropriate government, the Superintendent of Police has to be supplied with a certified copy of the order. The conditional release order must have an endorsement

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2. Section 432, Cr. P. C., 1973.

about the date of release and a description of the convict. Where the conditions of release are such as may require the police to act in a particular manner to secure their observance, then the Superintendent of Police has to act accordingly and has also to issue suitable orders in this regard to the concerned subordinates.

### **Jail release list**

As mentioned above, another set of persons who are subjected to preventive action by the police are drawn from the list of persons released from the jail on the expiry of the term of their sentences of the prisoners. The rules and the practice require a jailor of the district jail to send to the Superintendent of Police every month a list of prisoners who would be released in the next month. The list must reach the Superintendent of Police before the 15th of each calendar month. In addition to the above, the Jailor, if necessary, also sends a supplementary list containing the names of prisoners who have been admitted after the 15th of each month and who are due to be released in the following month.

The administrative system is thus geared towards the screening of potential offenders, so that a list is kept ready in advance for the purpose of police surveillance. Where there is delay in the receipt of the release list from the jail, the matter is reported to the Inspector General of Jails who brings it to the immediate notice of the Superintendent of Jail.

Extracts from the release list are communicated by the Jail Superintendent, who manages to send them to the police stations within the limits of which the prisoners' homes are situated. The Station House Officers who receive the extracted information about prisoners return the same after a reasonable time, after taking notice of the fact whether the prisoner referred to has, or has not, come back to his home after his release.