

Chapter IX

RECORDS PERTAINING TO HABITUAL OFFENDERS

Categories

The usual method of classifying habitual offenders is to label them under various categories, such as "history sheeter," "known depredator," "rowdy" and "bad character". Each category is listed separately.

Personal files and history sheets

A personal file is prepared for each offender, whether the offender is classified as "history sheeter", "known depredator" or "bad character". The personal file is really the first step taken in compiling the record of a history sheeter. As soon as information is received by the police that the person concerned is addicted to a life of crime or is an associate of criminals, the information is recorded in a tabulated form. This information forms the foundation of the personal file. Other information obtained subsequently about such person, whether it be favourable or be against him, is also added and recorded in the personal file. The nature and quality of information thus gathered in the personal file form the basis of a decision for opening a history sheet. A personal file must be maintained for a person for whom a history sheet exists. The opening of a personal file does not, however, necessarily mean that the person is a history sheeter. The personal files of persons whose history-sheets are maintained are put in serially to form a separate record—separate from the persons of the personal files for whom no history sheet exists. The two classes of records are kept in two different bundles. A register is also maintained at every police station which contains a general index to history sheets and personal files. When a history sheet is opened, it is given a permanent serial number, and entered in the general index register. This number of the history sheet is not changed, unless the history sheet is destroyed or transferred to another police station and is allotted a fresh serial number at the receiving station.

Composition of history sheets

The history sheets are maintained for ex-convicts and persons who have been bound for good behaviour. They are intended to secure compliance by offenders with conditions imposed at the time conviction

or release, as well as for the purposes of regular surveillance. A person for whom a history-sheet is maintained is closely, but quietly and discreetly, watched. Information about him is collected from the village official and others. Generally, the departmental instructions lay down that history-sheets should not be subjected to any annoyance or to obstructive enquiries. The fact that an account is being kept of the doings of a person is not divulged. The officer in charge of the police station himself maintains the history sheets. History sheets are not opened for persons who have no fixed residence.

A history sheet generally consists of three parts:

(i) The first contains a brief account of the life of the habitual offender, his habits, means of livelihood and his relations with the village or the locality.

(ii) In the second part is entered a detailed account of each of the offences committed by the person. This part specifically contains information about the offences, and also information about the places where he has been suspected of having committed the offences. In each case, the method of committing the crime is carefully described. The names of proved or suspected associates are also mentioned.

(iii) The third part of the history sheet deals with the current history of the habitual offenders, which is entered up by the Station Officer in charge. This information is the sum total of the notes found in the history-sheets and also of such material as may be gathered in the course of duty of collecting intelligence in the area. This part of the record has to be absolutely fair and any information favourable to the history sheet has also to find a specific mention in the record.

History sheet of known deprecator (K. D.)

In certain cases, the history sheets are automatically opened by the officer in charge of the police station at the time of conviction. The persons for whom history sheets are automatically opened are:

- (a) persons who have committed offences relating to coin, government stamps or against property and have been sentenced to life imprisonment and are released;
- (b) robbers and dacoits who have once been convicted or any of the offences committed under sections 392—402 of the Indian Penal Code, and who have exhibited a degree of professionalism in the method and manner of committing the offence;
- (c) persons who have attained the ill-reputation of being professional criminals and who were prosecuted or sentenced for homicidal offences by the use of poison or attempt thereof;
- (d) the habitual offenders who have been bound over, even once, for security for good behaviour;

- (e) persons convicted of having committed theft three times and have been convicted twice of the offence of house breaking.

A person who falls in any of the above categories is termed as a "known depreddator" (K.D.). The history sheet of a known depreddator gets opened up automatically and is retained for two years from the date of his release from the jail or on the date of the expiry of the bond, as the case may be. The departmental practice is to keep a history sheet alive for the above period even though the person might be acquitted on appeal.

History sheets of other habitual offenders

Departmental instructions provide that the police authorities may bring in undesirable characters for inclusion in the category of habitual offenders so that surveillance may be kept on them. The surveillance is in the nature of an administrative check on their antecedents and behaviour. By keeping a watch on potential offenders, the law enforcement officials keep themselves posted with the activities and movements of the known anti-social elements who may be prone to crime in the district. Under the orders of the Superintendent of Police or the assistant Superintendent of Police, the history sheets can be started against the following types of persons, *viz.*,

- (i) persons who have once been convicted under any section of the Indian Penal Code and are, in the opinion of the police administration, likely to commit further crimes;
- (ii) persons who have not been convicted but are believed to be addicted to a life of crime or suspected to be the receivers of stolen property;
- (iii) persons convicted under the Arms Act, Opium Act and other local and excise laws;
- (iv) persons who are suspected to be smugglers in arms, opium, liquor or other dangerous drugs as defined in the Dangerous Drugs Act (Act 2 of 1930);
- (v) persons who may be liable to be subjected to an enhanced punishment if they are convicted of an offence proposed to be committed in the near future.

History sheets of persons of the above type are maintained for a period of one year from the date of opening. In any case, as soon as the period of retention of a history sheet expires, the officer in charge of the police station submits a report through the Circle Inspectors to the assistant superintendent of police, for orders as to whether the history sheet should be closed down or should be retained. When history sheet changes his residence, the record is sent to the officer-in-charge of the

station in whose jurisdiction he takes up residence and an acknowledgment is obtained.

A register for checking the movements of all history sheeters is also maintained in each police station with necessary remarks. The names of checking officers are also entered in the records.

Rowdy sheets

A Police Superintendent or his assistant may order the opening up of a "rowdy sheet" for certain type of offenders who may otherwise be not fully eligible for enrolment as habitual offenders or known depredators but whose potential for committing anti-social acts and criminogenic tendencies are well pronounced to the knowledge of the police. The list is picked up from those who habitually commit, attempt or abet to commit offences involving a breach of the peace. In fact, the persons who have been bound down by courts under sections 106 and 107 of the Code of Criminal Procedure, 1973 form the core of the "rowdy" category. Care is taken to ensure that defiant offenders who seek to disturb the public tranquility are included in the list. Rowdy persons attract police attention when public tranquility gets disturbed by men who have a record of having committed offences involving assault or the use of criminal force or criminal intimidation, as well as causing such mischief as is likely to lead to the breach of peace. A sheet is opened up for each of such persons. Persons who are convicted of creating a row in public places or who commit indecent exposure in the public place under section 34 (vi) of the Police Act, 1861 and the "boozing bums" who frequent the public places in a state of intoxication, at least twice in two consecutive years, are also entered in the rowdies' register. All these men are to be kept under surveillance.

Bad character rolls

Undesirable characters who have gained enough notoriety as persistent offenders, or those whose records of criminality are evident, find their names in the roster of bad characters. The roster also includes such surveillees as have either been listed as a history sheeter or as a rowdy in the respective registers kept in the police station. Other men in this category are persons who demand some kind of police attention and a watch on their conduct. The list of bad characters is thus more exhaustive than the history sheeters. It is compiled by the local police authorities as an administrative measure to keep check on them, and (if need be) to take necessary legal action against any of them for being proclaimed as habitual offender.

As noted above, the preparation of the list of bad characters in an area is the concern of the local police. The local police watches the

movements of persons of ill-repute and also of such strangers as are capable of drawing police attention by their acts and deeds. The police authorities then classify the characters into two categories, and for each category a separate record is kept. Out of these two records one contains the names of local bad characters, while the other is meant for outsiders, who have entered the jurisdiction of the police station from some other place.

**Confidential nature of the records :
safeguard to the individual**

The recent pronouncement of the Supreme Court in *Mulak Singh v. State of Panjab*¹ is a landmark decision on the limits of police surveillance and the scope of judicial scrutiny of an entry made in the police surveillance register. The law may be equally applicable for purposes of making entries in other such records. In the instant case the names of the appellant and his brother were entered in the surveillance register maintained at the police station 'A' Division, Amritsar under Rule 23.4 of the Panjab Police Rules.²

1. AIR 1981 S C. 760.

2. Rule 23.4 provides:

23.4 (a) In every police station, other than those of the railway police, a Surveillance Register shall be maintained in Form 23.4 (1). (2) In of such register shall be entered the names of persons commonly resident within or commonly frequenting the local jurisdiction of the police station concerned, who belong to one or more of the following cases: (a) all persons who have been proclaimed under section 87, Code of Criminal Procedure (S.82 of the Criminal Procedure Code of 1973); (b) all released convicts in regard to whom an order under section 545 Criminal Procedure Code, has been made (S.356 of the Criminal Procedure Code of 1973) (c) all convicts the execution of whose sentence is suspended in the whole, or any part of whose punishment has been remitted conditionally under section 401, Criminal Procedure Code, 1973) and (d) all persons restricted under Rules of Government made under Section 16 of the Restriction of Habitual Offenders (Panjab) Act, 1981.

In Part II of such register may be entered at the discretion of the Superintendent (a) persons who have been convicted twice, or more than twice, of offences mentioned in Rule 27.29; (b) persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not; (c) persons under security under section 109 or 110, Code of Criminal Procedure; (d) convicts released before the expiration of their sentences under the Prisons Act and remission rules without the imposition of any conditions.

Note-This rule must be strictly construed and entries must be confined to the names of persons falling in the four classes named therein.

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The *vires* of the Panjab Police Rules which authorised the maintenance of the surveillance register was not questioned before the Supreme Court. Two principal questions were raised for consideration of the court (1) whether a person was entitled to be given an opportunity to show cause before his name is included in the surveillance register and (2) whether, in the instant case, their names were included in the register without any grounds for reasonably believing them to be habitual offenders or receivers of stolen property as required by Rule 23.4 (b). The second submission was based on the ground that the appellants had not been previously convicted or were placed on security for good behaviour or were proclaimed as offenders at any time earlier.

The court upheld the right of police to keep discreet surveillance over reputed bad characters, habitual offenders and other potential offenders. The court held that organised crime cannot be successfully fought without close watch on the suspects.

It is not necessary that the principle of *audi alteram partem* should be complied with before a name is entered in the surveillance register. The court held that history sheets and surveillance registers have to be and are confidential documents. Neither the person whose name is entered in the register nor any other member of the public can have access to the surveillance register. The court was of the view that the nature and

Rule 23.5 provides that the surveillance register shall be written up by the officer incharge of the police station personally or by an Assistant Sub-Inspector. No entry in part II is to be made except by the order of the Superintendent of Police and no entry in Part I is to be made except by the order of a gazetted officer. It is also provided that ordinarily a history sheet shall be opened for a person before his name is entered in Part II of the surveillance register. If from the entries in the history sheet the Superintendent is of the opinion that such person should be subjected to surveillance he shall be subjected to surveillance and shall enter his name in part II of the register. In the case of persons who have never been convicted or placed on security for good behaviour their names shall not be entered until the Superintendent has recorded definite reasons for doing so. The recording of reasons is to be treated as confidential. Rule 23.7 prescribes that police surveillances shall comprise of close watch over the movements of the person under surveillance, by police officers, village headmen and village watchmen as may be applicable, without any illegal interference. Rule 23.8 provides that the preparation of a history sheet is to be done with great care and, invariably, by the officer incharge of the police station or by a thoroughly experienced Sub-Inspector. Detailed provision is made in the rules with regard to the preparation, maintenance and custody of history sheets. Rule 23.31 provides the records connected with police surveillance are confidential and nothing contained there may be communicated to any person. The district magistrate and the magistrate are, however, entitled to the records in accordance with rule initial.

character of the function involved in the making of an entry in the surveillance register is so utterly administrative and non-judicial that it is difficult to conceive of the application of the rule of *audi alteram partem*. The observance of principles of natural justice may defeat the very object of providing for surveillance.

It has been held that ordinarily the names of persons only with previous criminal record are entered in the surveillance register, except that the names of those persons who are reasonably believed to be habitual offenders or receivers of stolen property whether they have been convicted or not, may also be entered. The court viewed that it is only in the case of this category of persons that there may be an occasion for the abuse of power. But in this category, the entry could only be made by the order of the Superintendent of Police who is prohibited from delegating his authority under rule 23.5. Further, it is necessary that the Superintendent of Police must entertain a reasonable belief that the persons whose names are to be entered in the surveillance register are habitual offenders or receivers of stolen property. Such existence of reasonable belief was made the subject matter of judicial scrutiny when the court held:

While it may not be necessary to supply the grounds of belief to the persons whose names are entered in the surveillance register it may become necessary in some cases to satisfy the court when an entry is challenged that there are grounds to entertain such reasonable belief.³

The laws on habitual offenders enacted by the states are of extraordinary character which seek to meet those exceptional cases where action against bad characters and undesirable elements of the society is not possible in accordance with the ordinary criminal law of the land. In such situations, secret surveillance is necessary to prevent crime. The enactments do not make provision for the judicial trial or proceedings. Such proceedings are also not governed by the Criminal Procedure Code, 1973 or by the Indian Evidence Act, 1972 except where expressly permitted by the relevant Act itself. Such enactments no doubt make serious inroads on the personal liberty of a citizen but such restraints have to be sustained in the larger interests of the society. The freedom of comparatively fewer number of people may be restrained, so that majority of the community may move and live in peace and harmony, and carry on their peaceful avocation untrammelled by any threat of violence or fear to their person and property. The right of the individual has to yield to the larger interest of the community in such exceptional situations.⁴

3. *Supra* n. 1 at 764.

4. See, *State of Gujarat v. Mehbub Khan*, AIR 1968 S.C. 1463.