

Chapter X

DECLARATION OF HABITUAL OFFENDERS : THE REGISTER

Registration of habitual offenders is one of the important regulatory measures. The Superintendent of Police is equipped with full information about the known depreddators or the potential ones who have been classified either as history sheeters, rowdies or bad characters. A loose leaf register, which is maintained at the police superintendent's office, furnishes the required information about such characters. Each case is recorded separately, and is assigned a serial number. The Superintendent of Police examines the register from time to time and peruses the record of the individuals. They may be residing within his jurisdiction, or may be in jail at the time of such examination. It is out of these names in the register that persons are chosen for being notified as habitual offenders. The general pattern of the rules and the procedure adopted for the purpose of initiating action for putting curbs on them and imposing restrictions on their movements remains substantially the same in all the states.

In terms of definition of a "habitual offender" in the state Acts, the authorities have to consider the question if the case of each individual falls within the ambit of the definition:¹ for example, the person selected for proposed restrictive action should be one who has a past record of having served a sentence of a substantive term of imprisonment on less than three occasions during a continuous period of five years. His involvement in crime has to be for offences enumerated in the schedule annexed to the state Act. This is the usual requirement.

Proposal for restrictions

The proposal to impose restrictions on a habitual offender emanates from the Superintendent of Police. It is forwarded to the district magistrate in a prescribed proforma. The proforma contains all necessary

* The description of the process of registration as recorded in this chapter is based on information gathered in field studies.

1. E.g. Section 2 (a), Karnatak Habitual Offenders Act (Karnatak Act 24 of 1961).

details about the persons concerned, also details regarding the sentences awarded to him. A recommendation to impose a restriction is also made therein. The convictions to be noted are generally for offences committed by the persons on three occasions during the period of five years. However, in administrative practice, while computing the substantive sentence, where the fact of any conviction having been set aside on appeal or revision is unascertained the conviction at the trial court continues to be recorded.

When the district magistrate receives the above report, he has to satisfy himself that reasonable grounds exist with regard to the concerned person for declaring him a habitual offender. However, the opinion of the Superintendent of Police as to the person being a habitual offender, in large number of cases, are upheld by the district magistrate. Apparently expediency as well as the need for co-ordinated action in the administrative wings of the local area may be responsible for this attitude.

Procedure before the district magistrate

Assuming that the state government has, by notification, directed the registration of habitual offenders,² and assuming that the police have forwarded the name to the district magistrate,³ the next step in this direction is to issue a notice to the person concerned, requiring him to show cause as to why he should not be declared a habitual offender. The notice is issued by the district magistrate. It is served in the prescribed manner.⁴ A person in jail is served through the Jail Superintendent, who has to arrange for the appearance of such habitual offender before the authority specified in the notice⁵. Usually, a time of 10--15 days is allowed for reply to the show cause notice. The appearance may be in person or through an advocate. The absence of appearance or the non-filing of the written statement within the given time leads to an inference that the person has no objection to the proposed action⁶

Effective publication

It has, however, been found that the notice issued to the offender is generally written in an illegible hand,⁷ and hardly finds circulation,

2. Cf. section 3, Karnatak Habitual Offenders Act, 1961.

3. See *supra*, p. 67.

4. Section 4, opening lines, Karnatak Habitual Offenders Act, 1961; Rule 4, Karnatak Habitual Offenders Rules, 1969.

5. Cf. Rule 5 (1), Karnatak Habitual Offenders Rules, 1969.

6. Cf. Rule 5 (2), Karnatak Habitual Offenders Rules, 1969.

7. Opinion based on field study.

owing to the paucity of the personnel and other pressures and priorities hanging over the staff at the local level. The formality of publication comes to be observed in a mere ritualistic way. The person notified does not get an adequate opportunity of showing cause against the proposed action. Publicity by way of insertion of the advertisement in a local newspaper—which would be advisable is—avoided, presumably because of the prohibitive costs of such publication and because of the meagre resources budgeted for the local administration.

Hearing

On expiry of the period specified in the notice, the question whether the person should be designated as habitual offender or not is taken up for consideration. Hearing is granted where a representative is filed. In other cases the matter solely rests within the discretionary power of the district magistrate, after an inquiry has duly been made. An affirmative decision, if taken, is then followed by publishing the name of the offender in the gazette.

Registration recorded

The matter is then recorded in the loose leaf register which is maintained by the Superintendent of Police and where the records are serially arranged. The register contains the names, previous convictions and other prescribed particulars of habitual offenders in the district.⁸ The offender may also be required to furnish his finger and palm impressions, foot prints and photographs.⁹ The law requires him not to obstruct the examination of his physical peculiarities. If resistance is shown by him, the police can use necessary force to make him submit to the requirement of physical examination, including that of being photographed.¹⁰

The gazette notification of the offender's name entails considerable amount of clerical work to be done at the office of the Superintendent. A copy of the thumb impressions and finger prints of the offender is sent to the Finger Print Bureau and an acknowledgement is received for the same. Change of residence by the notified offender may also require the passing on of information to the personal sheets, as well as its being sent to the police authorities of the area where he had moved.¹¹

8. Cf. section 6, Karnatak Habitual Offenders Act, 1961.

9. Cf. section 7, Karnatak Habitual Offenders Act, 1961.

10. Cf. The Identification of Prisoners Act, 1920.

11. Cf. section 8 (1), Karnatak Habitual Offenders Act, 1961.

This is done by the police in practice, though the statutory provisions may speak of action being taken by the district magistrate. In case the offender is in jail, the records are also sent there. A copy is also kept with the officer-in-charge of the police station in whose jurisdiction the offender resides. The police officer keeps on up-dating it by adding supplemental information which is also recorded in the district police register.

An identification card of the offender, with the photograph pasted on it, along with the description of his physical details together with the restrictions imposed on his movement and also other conditions, is issued to the registered offender. This card must be produced by the registered offender for inspection as and when required by a police patel, police officer or magistrate.¹²

The modality of enforcement of surveillance

The enrolment of anti-social character is followed up by the police vigilance keeping a watch on their behaviour and actions. As and when information is received that a habitual offender, who has been under surveillance is not to be found in the area, the officer-in-charge of the police station would fill up a character roll meant for these types of offenders and would add a brief precis of the habits and manners of the person concerned. This information is then forwarded by the quickest possible means to the officer-in-charge of the police station within whose jurisdiction the bad character is believed to have gone. If the destination of the person is not known, the information is forwarded to every police station, within or outside the district, to which there is a likelihood of his having gone. If the surveillee is known to be member of a gang of criminals, the officer in-charge, besides taking the action stated above, at once arranges for a special watch to be maintained on other members of the same gang, whether they reside in his jurisdiction or that of another police station, until the surveillee returns back or his antecedents are fully ascertained.

Administrative modality has been so devised as to ensure that once information about a missing bad character gets into circulation, each police officer who receives such information has to be alert enough to look for him. Thus, a police officer who receives the roll from another brother police officer has to take immediate steps to ascertain whether the bad character has gone back to his original place. If the bad

12. Cf. Rule 17, Karnatak Habitual Offenders Rules, 1969.

character is found in his jurisdiction, the police officer takes down the information about the date and hour of his arrival, the name of the person with whom he was staying, and also the persons with whom he had been associating. He has to arrange for keeping a watch on him in the way as if he were a registered bad character of his locality.

In case the circulation of the 'bad character roll' in other jurisdictions remains a fruitless effort so far as the other jurisdiction is concerned, then, on the expiry of one week's time from the date of the receipt of the roll, the same is returned by the other jurisdiction to the issuing police station with a statement endorsed on its back to the effect that the named bad character has not been traced.

Maintenance of vigil

An administrative power to maintain constant vigil and check on a registered offender is also exercised when he leaves the limits of the station for his home outside the district or elsewhere. If he goes to a police station other than that in which he is registered, the officer-in-charge of the police station to which he has gone has to assume responsibility for keeping a watch and thus to keep remote control. Such officer has to note down on the back of the roll all the information regarding his movements which he has to collect while the registered offender remains within the limits of his police station. He has to send the information to the parent police station, as well as, to any intermediate police station or stations falling on his route.

Conversely, the regulation and control of anti-social elements, who arrive from outside jurisdiction, is also within the duties of the local police, when information is received that a suspicious stranger has arrived within the jurisdiction of a police station, the officer-in-charge arranges to send the 'Bad Character Roll' with the utmost urgency and the same is despatched to the police station within the limits of which the stranger alleges that he resides. If, before the receipt of the reply to the roll, the stranger leaves the place for another jurisdiction, a copy of the roll is sent to that police station. On receiving such a roll, the officer-in-charge of the police station at once returns it with complete information regarding the individual in question. If he is not a resident, the roll is returned with a statement to that effect. In such case the officer who issued the roll has to take all possible steps to discover the identity of the stranger.