

## Chapter XII

# REGULATORY MEASURES FOR HABITUAL OFFENDERS

Regulatory measures for habitual offenders are (a) coercive, and (b) corrective. The coercive category may be discussed under the following heads :

- (i) Reporting by habitual offenders—general.
- (ii) Reporting about residence.
- (iii) Restrictions on movements and the holding of roll calls.
- (iv) Domiciliary visits by the police.

The corrective mode of regulation can be in either of the two ways:

- (a) sending of habitual offender to a corrective settlement.
- (b) Termination of status as habitual offender.

### **Reporting by habitual offenders**

A person who has been registered as habitual offender may by an order in writing of the district magistrate be required to report himself to the police at fixed intervals and to notify his absence or intended absence.<sup>1</sup> This condition is noted down in the notification mentioned above. Usually, the offender is required to report himself every month at the nearest police station or outpost concerned, at any time between 7 A.M. and 9 A.M.<sup>2</sup> However, the reporting intervals may be of a shorter or longer duration, for reasons to be specified in the order of the district magistrate. As and when the offender required to report, presents himself at the police station, an entry of the fact of his attendance is made in the identity card. If the offender reports at a police station other than the one in whose jurisdiction he resides, the fact of his presenting himself is intimated to the latter police station.

Where unavoidable reasons (such as illness) crop up which prevent an offender from reporting to the police on the scheduled date, the

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1. Cf. Section 7 (1), Karnatak Habitual Offenders Act, 1961.  
2. Cf. section 7 (2) (a), Karnatak Habitual Offenders Act, 1961.  
3. Cf. Rule 7 (a), Karnatak Habitual Offenders Rules, 1969.

offender may obtain permission within a week or a period equal to one half of the interval fixed for reporting by the notification whichever is shorter. The permission can be obtained from the officer in charge of the police station or of the police outpost, the village headman or the village watchman.

An advance permission for leave of absence from reporting on fixed dates can also be granted on making an application. The grounds on which exemption is sought have to be stated in an application to the officer in charge of the police station, who can grant such permission for not more than fifteen days at a time. An application seeking exemption for a period exceeding over fifteen days is sent to the Superintendent of Police, who is empowered to grant permission for not more than six months at a time.

Late attendance by an habitual offender and exemption granted for absence from reporting to the police for the prescribed period are recorded in the identity card of the habitual offender.

### **Reporting about residence**

A registered offender must notify his place of residence, including any intended change therein<sup>4</sup>. A permanent residential address is also required to be furnished. The offender is also required to inform the police every month that his residential address remains the same as entered in his identity card. The information is open for inspection and checking.<sup>5</sup>

In case the offender intends to leave his place of residence temporarily or permanently, he must inform the police officer concerned about it and send an application (along with his identity card) to him. He can leave the place only when a certificate is granted to that effect by the police authorities. If the offender seeks to change his residence permanently to a place which is located outside his present police jurisdiction, the officer in charge of the police station where he intends to reside in future is informed and the offender is required to observe the restrictions imposed upon him in that jurisdiction and to bring the same to the notice of the police officer of that jurisdiction.

A request for a temporary change in the residence of the habitual offender has to be made in an application mentioning the reason for

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4. Cf. section 7 (1), Karnatak Habitual Offenders Act, 1961.

5. Cf. Rule 6, Karnatak Habitual Offenders Rules, 1969.

change or absence from the present abode, the place where he is proceeding, the time and date of his departure, the route by which he intends to proceed and other details such as the time to be taken by him in the outward and inward journey. If there is an overstay by an offender for good and sufficient reason, the matter has to be brought in writing to the notice of the police officer in whose jurisdiction he happens.

The foregoing measures which are essential for an effective surveillance by the police have been designed to regulate the behaviour and movement of habitual offender. These measures, prescribed by the rules made under the state laws relating to habitual offenders, enable the police authorities to keep a watchful eye on the potential law breaker. Detailed information sought from him even for a temporary period from his place of residence is meant to keep check upon him so that the offender may not be able to slip away in the company of other criminals and thus aggravate the difficulties of the police in the keeping of order and peace in the area. The authority of the police administration to impose rigid restrictions in the ordinary course of life (which otherwise is pursued by any resident) has, in the case of a registered offender, an effect of impinging upon locomotion, personal liberty and the choice of his locality. However, for effectually carrying out the legislative purpose of controlling the conduct of habitual offenders and preventing them from engaging further in a career of crime, the restrictions have, in principle, been regarded as constitutionally permissible.

#### **Restrictions on movement & the holding of roll calls**

Habitual offenders who, having been registered, are required to report at fixed intervals to the police can also be subjected to further restrictions by putting a curb on their movements. A notification may be issued by the competent authority<sup>6</sup> restricting the movements of a habitual offender to a specified area, and requiring that the offender may not leave the area without permit. This notification is issued under a provision different from the one which seeks to prescribe conditions as to reporting. The notification is issued when an increase in the activities of the offender comes to the notice of the police. The police then submits a proposal to the appropriate authority who, in its turn, issues a notice and follows the regular procedure of affording an opportunity to the offender to show cause why further restrictions on his movement should not be imposed. If, on receipt of representations,

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6. Cf. section 11 (1), Karnatak Habitual Offenders Act, 1981.

the appropriate authority is satisfied that restrictions on movement should be imposed to a particular area, then the order is passed.<sup>7</sup> Even where such a restriction is imposed, the specified authority is empowered to permit an offender to move outside the restricted zone in certain cases where a request to that effect has been made<sup>8</sup>. This is to be done in consultation with the Superintendent of Police. A permit is issued in a prescribed proforma, where the request is granted. A permission to move beyond the extent of the specified zone can also be granted for a short period by the officer in charge of the police. While granting such permission, further conditions with regard to following of the route and other related matters can also be imposed. The conditions of relaxing or modifying restrictions on movements of the habitual offender are to be recorded. Entries to the above effect are to be made in the identity card. A register is also maintained in the direct police headquarters as well as also the police station where the habitual offender is residing. The register records the restriction imposed on the offenders, as well as any relaxation that might have been permitted from time to time.

The Superintendent of Police may authorise a police officer not below the rank of sub-inspector, the village watchman or the village headman to hold a roll call of the habitual offenders. The roll cannot be held at intervals shorter than those fixed by the Superintendent of Police by a general or special order. For special reasons, a special roll call can be held at any time and on any date of which reasonable notice will have to be given.

### **Domiciliary visits**

Domiciliary visits by police officers are of two kinds,

(i) The police officer may, in the course of his usual beat, go around the vicinity of the habitual offender's residence at any hour of the day or night. He may make such inquiries as he considers fit to ascertain for himself the presence of the offender in a manner that may not cause offence to him. To take a roll call with loud shouts at an unearthly hour by the police officers, with a view to ensuring the presence by the offender in his abode, had been the usual police practice by way of domiciliary visits. However, the abusively vulgar way of ensuring the presence of an offender is itself against the dignity and freedom of

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7. For detailed procedure in respect of section 11 (2), see *Karnatak Habitual Offenders Rules, 1969* and Rule 8 thereunder.

8. *Cf. Rules 10, 12, 13, 14, 15, Karnatak Habitual Offenders Rules, 1969.*

individual and has therefore been deemed unbecoming. The practice of paying domiciliary visits by the police is comprehended within the police powers and duties. However it has to be reasonably performed.

(ii) Besides the general power of making inquiries at or near the place of abode of the offender, the rules empower a magistrate or a police officer not below the rank of a sub-inspector to enter and inspect the residence of a habitual offender. A reasonable notice is required to be given in such cases. The need for inspection of residence of habitual offenders arises where the authorities have reason to believe that an order or a condition imposed under the rules is likely to be contravened.

Some state rules<sup>9</sup> deal specifically with domiciliary visits (by day or night) to be paid by the village patel where a registered offender whose movement is restricted fails to report.

### **Reasonableness of restrictions and their constitutionality**

This aspect has been examined in the previous chapter while discussing police surveillance under the Police Act. A habitual offender has a better procedural protection, e.g. in the matter of declaring a habitual offender or imposing restrictions on his movement (a reasonable opportunity of being heard has to be given) than what is provided in the Police Acts. It seems the various restrictions on habitual offenders discussed in this chapter will withstand constitutional challenge.

### **Corrective regulation**

The corrective measure contemplate reforming the offender through institutional treatment. State laws relating to habitual offenders provide for setting up corrective institutions in the state for the purpose of placing such offenders as are deemed worthy of being reformed.<sup>10</sup> A privately managed institution can also be approved or certified as a corrective settlement for the purpose of the State Habitual Offenders Act. A settlement officer is in the charge of the institution. He is appointed by a committee consisting of the Deputy Inspector General of Police, Railways and C.I.D. The incumbent of this office is generally chosen from among the members of the subordinate police services.

The selection of offenders for being sent to the corrective settlement is based on an inquiry conducted by the district magistrate<sup>11</sup>. It appears

9. e.g. Rule 11, Karnatak Habitual Offenders Rules, 1969.

10. sections 13-15, Karnatak Habitual Offenders Act, 1961.

11. Cf section 14, Karnatak Habitual Offenders Act, 1961.

that the names are suggested and forwarded by the Superintendent of Police. The district magistrate satisfies himself that it is expedient with a view to the reformation of a registered offender and the prevention of crime<sup>12</sup>, that the registered offender should receive training of a corrective character for a specified period, which may not exceed the duration for which he has been registered.

The factors that are taken into consideration for selecting an offender for corrective training are reliable to his age, state of health and criminal record. He should be within the age group of forty years and have been convicted of an offence punishable with imprisonment or required to execute a bond for good behaviour. The physical and mental condition of the offender and his suitability for receiving corrective training in settlement are also to be taken into the consideration<sup>13</sup>. If the magistrate is satisfied that action should be taken to send a habitual offender to corrective settlement, an opportunity is given to him to show cause as to why such a direction should not be made. The procedure for such inquiry is the same as is prescribed by the Act and the rules for the registration of habitual offenders, except that no appeal lies from the order. In some states, a convicting court may pass such order on a habitual offender in lieu of sentence.

Once an inmate has been admitted to the corrective settlement, he is prohibited from remaining outside it, except under a pass of discharge licence granted under the rules. Permission for absence from settlement can be granted for a temporary period, which generally does not exceed fifteen days. Leave of absence for a longer period can be granted by the Superintendent of Police on the recommendation of the settlement officer. When the leave of absence for settlement is availed of, the inmate has to furnish details of his whereabouts, the route of his journey and the dates as to where he can be found during the period he seeks to be outside the settlement.<sup>15</sup> All such information facilitates a proper check and surveillance by the police.

Persons residing in a corrective settlement are to be provided with employment on some kind of labour or industry or other suitable work.<sup>16</sup> A permanent pass allowing an inmate to take up a regular employment outside the settlement is allowed in certain cases. In such cases, the inmate resides in the settlement, but is absent from the place during

12 Cf. section 14 (1); Karnatak Habitual Offenders Act, 1961.

13 Cf. section 14 (3), Karnatak Habitual Offenders Act 1961.

14 Cf. section 14, (2) Karnatak Habitual Offenders Act, 1961.

15 Cf. Rule 28, Karnatak Habitual Offenders Act, 1961.

16 Cf. Rules 23 (1), Karnatak Habitual Offenders Rules, 1969.

specified hours so as to enable him to work at the place of his employment. If the conduct of the inmate has uniformly been good, he can be allowed to stay outside the settlement on a permanent pass as a reward. The above exempt on apart, all other inmates have to attend daily a roll call before an authorised person during the specified time. The daily attendance is recorded in the register.

The inmate in the corrective settlement are, as stated above, kept engaged in agricultural or industrial occupations for which facilities are provided in the settlement. The work-load, hours of work, and rates of remuneration for the work as fixed by the district magistrate, subject to the general or special orders of the government. Increased wages are also given as a reward. Other forms of reward for good conduct and discipline may include exemption from daily attendance, liberal grant of passes of leave, allotment of land for separate cultivation, promotion to positions of responsibility and the like. A habitual offender who has given unmistakable evidence of good conduct and sustained industry for a sufficient period of time is permitted to stay outside the settlement (but within the district) for the purpose of earning. The recommendation for this purpose is made by the officer in charge of the settlement. The grant of such permission rests with the Superintendent of Police.

A concession granted to an inmate of the settlement can be withdrawn by the settlement management or the Superintendent of Police at any time without assigning any reason. The Act as well as the rules empower a settlement officer to impose penalties on the inmates with a view to maintaining discipline. The penalties may be in the nature of a formal warning, additional or arduous work, reduced wages or loss of wages, withholding or cancellation of leave of absence or leave from work if granted. The penalties are to be imposed on those habitual offenders who contravene the rule, or refuse to obey any reasonable order given by the officer in charge of the settlement. The punishments are to be inflicted only after a reasonable opportunity of hearing has been given to the habitual offender. An order passed by the settlement officer is liable to be revised by the district magistrate.

#### **Termination of the status of habitual offender**

The rules made under the state laws generally provide that the Superintendent of Police shall send, from time to time, to the district magistrate reports in the prescribed form regarding all habitual offenders who have either been subjected to one or the other type of surveillance or superintendence, both outside and inside the corrective settlements. The reports are to be used by the district magistrate for suitable action or for making necessary recommendations to the govern-

ment. The action or recommendation may relate to the discharge of the habitual offender or termination of his status as such. The state government is also empowered to call for the records of any proceedings in respect of a habitual offender and in respect of whom a notification has been issued by the district magistrate. This power is used in pursuance of a representation made by the person by way of a written memorandum addressed to the government.

A person designated as habitual offender can revert back to the status of ordinary person as and when he is discharged from the obligations imposed upon him under the Act and the rules. Infirm and sick persons, who otherwise could be habitual offenders, as per definition of the term, are left out of this category. The rules also prescribe that offenders having attained the age of sixty with no record of having committed an offence within the prescribed few years are also outside the purview.

In other cases, the term of a habitual offender is over on the expiry of the period of registration for which a notification had been issued, provided no further action for his registration is taken.

The habitual offender including the settlee can be exempted from any obligation being imposed upon him even earlier. Thus he can be discharged from being a habitual offender. This can happen only if the Superintendent of Police finds the behaviour and conduct of the person satisfactory and forwards his recommendation to the district magistrate. The district magistrate is vested with power to discharge the habitual offender and to recommend to the state government for his de-notification, although the latter step is hardly taken.