

Chapter XIII

SECTION 110, CODE OF CRIMINAL PROCEDURE —OPERATIONAL STUDY

Introductory

Chapter VIII of the Code of Criminal Procedure, 1973, which deals with the subject of security for keeping peace and good behaviour demanded from suspects and habitual offenders, is a complete code intended to deal with the problem of persons including habitual offenders who constitute a danger to peace and tranquility. Section 110 of the code is the key provision in this respect. The provisions of the section have been analysed in chapter II. The present chapter seeks to present a study of these laws in actual practice.¹

Difficulties in obtaining data

It should be noted at the outset that difficulties have been insurmountable in obtaining the necessary data and compiling the facts about the habitual offenders, particularly from the records maintained at the police stations and headquarters. The case studies, the impressions gained from interviews and conversations held with the police officials form the basis of observations made below as to the actual working of the preventive section of the Code of Criminal Procedure and the Habitual Offenders Acts. But the information culled out and computerised is rather meagre, and one hesitates to make specific observations. Nonetheless, the data, it is considered, is enough to indicate the trends of thought and action with regard to the use of preventive powers by the police.

Guidelines for screening of habitual offenders

Departmental instructions have laid down guidelines in regard to the screening of habitual offenders for purposes of possible action under the preventive provisions of the code. Before any action is proposed to be taken under preventive provisions either under the state law relating to habitual offenders or under section 110 of the Code of Criminal Procedure, the officer in charge of the police station is required to do some homework. A policy decision to initiate action rests on the following factors:-

(i) *Previous convictions*— This constitutes an important piece of evidence which can lay a basis for justifying a preventive action against the proposed offender. The significance of this information is greater if it is coupled with evidence of “general repute” usually gathered under the four heads mentioned below, particularly the last head. Any proof of definite acts or of suspicious absence subsequent to release of a convict from the jail, lends further weight to the fact of the person not conforming to proper conduct as expected of him after his release as a convict.

(ii) *Keeping the company of bad characters*— Information as to the association of the accused with other bad characters is generally available in the records of all suspicious characters maintained by the police. The proof of the person associating with bad characters can also be had from the records and proceedings of such prosecutions as involve other bad characters who might have been convicted, discharged or acquitted in groups of batches.

(iii) *Suspicious conduct*— A sudden and suspicious absence, or a suspicious movement, of the accused, is a material fact keeping a watchful eye on the habitual offenders. This information is available in the record maintained in one of the registers by the police, and can be proved by the officer who found him absent on an information given to him by a policeman, including the chowkidar of the village. The unverified enquiry slips can also be used for proving unverified suspicious movements.

(iv) *Suspicion of involvement in crime*— A suspicion of involvement in a specific case of crime under investigation can supply useful material. The details can be seen in the suspicion register. The basis for a strong suspicion must rest on the statements of witnesses who can advance exact reasons for their belief about a bad character being concerned in the commission of a particular crime.

(v) *Miscellaneous evidence*— This relates to the general repute and disposition of a criminal. This reputation is taken note of by the station officer of a police station. When he is satisfied that the evidence is sufficient for initiating a proceeding under section 110, Code of Criminal Procedure, he generally prepares a tabular statement. It is forwarded to the Superintendent of Police through proper channel for giving to all the concerned officers an opportunity of screening and scrutinising the information supplied about a particular person. This tabular statement contains all information necessary for deciding whether steps to initiate proceedings under section 110 should or should not be taken. The station officer then discusses the case with the sub-divisional officer and, after his concurrence, he proceeds to arrest the subject of the proceedings.

In the preparation of cases for purposes of action under section 110, Cr .P.C. the assistance of the history-sheet, if it exists, is invariable taken. The history-sheet contains a record of criminal activities of the person concerned. The usefulness or otherwise of the history-sheet depends on the quantum and quality of surveillance exercised by the police to gather information about the antecedents and behaviour of the offender.

Sample cases as revealing lacunae in the administration of the law

Despite the wholesome and stringent procedure laid down for screening and scrutinising the cases for the purpose of making a proper use of the preventive law, it has been found that casualness pervades its enforcement. This can be illustrated from sample case studies made from the police records.

Case 1. Four persons were arrested by the police from the same village for initiating proceedings under section 110, Code of Criminal Procedure. They were produced before the magistrate on the same day for executing bonds and furnishing securities for good behaviour. On the same day they offered the required security to the satisfaction of the magistrate and returned back to their village. It was found out that none of them had a record of previous conviction, nor was any of them listed in the active list or had a history sheet. In fact, no information about their movement, conduct or association was found on the record or was known to the police. They were never suspected by the police to have committed a crime during one year prior to the date of arrest.

Case 2. In another case, one person came to the adverse notice of the police. A history-sheet was immediately opened. Since then, for a period of 5 years he was neither suspected, arrested nor prosecuted in any case. After the lapse of five and half years, he was bound over under section 110, Cr. P. C. for a period of one year. Two years later, he was bound over again for another year under the same section, with a gap of one month after the expiry of his bond. He was again bound over consecutively for the third time. This performance was repeated for the fourth time as well, when, on the expiry of his bond for the third time he was arrested again, and after two months he was bound for a period of one year.

Even though the person concerned was arrested for four times, his name did not find mention in any of, the police records of bad characters or in the list of offenders believed by the police to have been involved in crime in the one year preceding their arrest. No record of previous conviction was found in respect of him, nor had any cognisable offence been reported against him during the preceding one year.

Guidelines not observed

The sample cases summarised above bear testimony to the fact that action is taken even though there is lack of information in the records and registers. The guidelines prescribed by the departments for scrutiny and screening of offenders are seldom observed. It also appears that preventive power by the police is used without the homework that should necessarily be done for a prudent and cautious exercise of the power, and without having fully ascertained particulars about the offender and his alleged undesirable activities. This shows the vast gap that lies between the law and the practice obtaining amongst the police officers. The records and registers maintained by the police are incomplete in details about the registered offenders. The incompleteness of the relevant records can be illustrated by referring to salient features of these records,

- (i) no importance is attached to the filling in of information in the registers,
- (ii) the prescribed proformas which are to be sent to the district magistrate are filled in a routine manner,
- (iii) copies of the same are available, but entries about particular offenders give the information rather cryptically.

Paucity of staff

The lack of proper maintenance and updating of records as the non-observance of departmental instructions for the collection of relevant information about the offenders (which has been noted above) can be largely attributed to the paucity of personnel at the police stations. Policemen in adequate number are needed,

- (a) in the field, for being detailed for proper verification of the facts, and
- (b) at the desk, for compiling and recording the information collected in the field.

Their present strength is definitely not enough to cope up with the desk work that is involved in such compilation and recording.

Proceedings against the offenders: A study in operation

It may be pointed out at this stage that in course of the police working some persons, who are noticed by the police as being active in criminal activities, are keenly watched. Lists of such suspects are prepared with the concurrence of superior police officers at the request of the

station officer. The active list need not to be of the habitual offenders, but may also include the 'budding bullies' and bad characters who cause irritation to the police and are suspected to be in criminal activities within a police district. The maintenance of such a list is within the administrative powers of the Superintendent of Police. These suspects do not necessarily qualify as habitual offenders, either under the Code of Criminal Procedure or under the state Habitual Offenders Act. Nevertheless, security proceedings are launched against them, as also against the habitual offenders.

**Proceedings under section 110 Cr. P.C. :
Antecedents of suspects**

The antecedents of the persons proceeded against under section 110, Code of Criminal Procedure are examined herein. The data in Table 13. 1. below relates to the Lucknow district (U.P.) covering a period of 30 months.

TABLE 13. 1

Name of police station	Number of persons proceeded against	Number of persons with previous conviction (but not notified offenders)	Number of persons on active list	Number of persons in known depre-dators list, but not notified	Number of persons suspected within a year before prosecution.
Mohanlal-ganj	13	7	4	-	6
Gosainganj	4	4	3	1	3
Nagram	3	2	2	1	2
Chinhat	3	3	-	-	1
Itaunja	3	-	-	-	-
Malihabad	9	4	3	1	1
Mandiaon	4	2	2	3	-
Kakori	17	9	5	-	10
Mall	2	1	-	-	1
Banthra	5	3	1	-	-
Total	63	35	20	6	24
Percentage		55.6	31.7	10.5	20.62

The above Table reveals that out of 63 proceedings launched by the police, 35 persons (i.e. 55.6%) were proceeded against simply for having a record of past convictions. 20 persons belonging to the "active list" (i. e. 31.7%) were also brought within the fold of section 110, Cr. P. C. These 20 persons were noticed as "active offenders", though they were not registered or notified offenders. From the point of view of the police, their "activities" may have been the basis for initiating action but, in law, justification for a valid action under the Habitual Offenders Act has to be sought from the enlistment and notification of persons as habitual offenders. Even assuming that these 20 persons (i. e. 31.7% of the offenders proceeded against) were really to be subjected to action under a preventive provision, then it follows that the proceedings against remaining-43 persons out of 63 (i. e. 68.3%)-were unwarranted proceedings under section 110 of the Code of Criminal Procedure. (Table 13.1).

The Table given above also disclosed that 6 out of 63 persons (i.e. 10.5%) were neither on the "active" list nor had they any past convictions but had been enlisted by the police for purposes of their administrative needs. Likewise, 20.6% of the prosecutions (i.e. 24 from out of 63 prosecutions) covered suspects who had come to the notice within only a year of the proceedings.

Assuming that the prosecutions of 20 "active" persons (i.e. 31.7%) were genuinely meant to be preventive, even then, it follows that in 68.3% of the proceedings there was no justification for the use of preventive power, even in the eye of the police.

Unwarranted resort to preventive action

The analysis of the data would thus seem to show that (i) the list of habitual offenders maintained at the police stations is hopelessly incomplete; (ii) the police can pick up any person considered undesirable by their standard and subject him to coercion under the preventive law; and (iii) proper and complete discretion is not exercised at all in launching the proceedings under section 110 of the Code.

The data in Table 13.1 above discloses that 50 persons (20+6+24) were either on the active list, or other lists of suspects. If the 63 proceedings included these 50 persons, it would reveal that there could possibly be 13 persons who had no previous convictions to their credit, but were recorded as mere suspects. Yet they were proceeded against under section 110. This is a point worth re-emphasising.

**Police use of proceedings under
section 110. Cr.P.C.**

Table 13.2 below shows (a) the number of persons who were on history-sheets, as well as (b) the number of persons proceeded against under section 110, Code of Criminal Procedure.

Table 13.2

Name of Police Station	Number of persons on history-sheet	Number of persons proceeded against u/s 110 , Cr. P. C.
Chinhat	3	3
Mall	2	2
Mandiaon	4	4
Gosainganj	4	4
Banthra	4	5
Malihabad	7	9
Nagram	2	3
Mohanlalganj	5	13
Kakori	6	17
Itaunja	-	3
TOTAL	37	63

The above noted 63 persons were those who had either been on the active list of the history sheeters for whom the records were maintained in the police station, or those who had earlier been proceeded against under section 110, Cr. P. C. The Police Regulations as well as the departmental memoranda regarding the registration and surveillance of bad characters prescribe that where a person who is not on a history sheet is bound over under section 110, Cr. P. C., it is necessary that a history sheet should be opened up for him at once. The above Table indicates that out of 63 persons who were proceeded against for being bound over for good behaviour, only 37 persons were history sheeters (59%). No history sheet had been maintained for the remaining 41%. One can legitimately infer that action contemplated to be taken for binding over a person for good behaviour is not necessarily confined to persons marked and registered as habitual offenders. The inference can also be properly made that the instruction for classifying habitual offenders on the basis of the successful proceeding launched against a person under section 110, Cr. P. C. are hardly followed by the police.

History-sheets and security proceedings

Further data has been culled out from the records to show that history-sheets are not opened for persons bound over in security proceedings. Table 13. 3 below reveals that while security had been demanded from twenty-one persons during the period of three months that was studied, in only one case a history-sheet was opened.

Table 13.6

Name of police station	Number of persons not on history-sheet, but bound over under section 110	Number of history-sheets opened
Mohanlal Ganj	7	...
Itaunja	3	...
Malihabed	2	1
Kakori	9	...
Total	21	1

These figures further re-inforce the comment that there is a wide gap between the procedure prescribed for enforcing the law in relation to habitual offenders and the police practice in actually dealing with them.

Police use of proceeding under section 110, Cr.P.C.

It has often been seen that the preventive powers designed and enacted either under the special law relating to habitual offender or under the Code of Criminal Procedure have been used for containing the crime rate in the local police jurisdictions by the the local police, rather than for controlling and regulating the behaviour of persons specifically identified by the legislature as "habitual offenders." Police casualness in complying with the rules and procedure for keeping proper records of the persons designated and detected as habitual offenders is a pointer to this fact, resulting in indiscriminate arrests. The avowed legislative and administrative directions thus get relegated to the background, on account of the police attitude towards the problem. The police mind seems to be burdened with the long time belief that only these extraordinary measures can befittingly provide answers to the problems of crime. In

this context, one may express the view that a perfunctory compliance, or total non-compliance, with the administrative directions and rules by the police, is a breach of the procedures and norms set out by the legislature and the administration, resulting in preventive modes being diverted to punitive actions. The absence of efforts to register and notify an offender as an habitual offender, with the habitual ones, results in harassment of the suspects. The preventive powers seem to be used by the police for causing discomfort and uneasiness amongst all kinds of offenders from time to time, with a view to creating an impact amongst them to make the police presence felt as an alive and active force. The power has also been used to publicise the anti-crime drives conducted by the police periodically with a view to creating an impression in the public minds about their being deeply concerned with the law and order problems affecting the public at large. It enables the police to get publicity in the press as well as gain sympathy from the public. However, such an approach does not yield fruitful results in achieving the purpose which the rules and the prescribed procedure seek to achieve in a systematic and methodical way namely—controlling, regulation, correcting and rehabilitating the habitual offender who otherwise finds himself maladjusted to the social conditions and also finds addicted to a life of crime on account of his inability to solve his peculiar problems resulting out of such maladjustments.

Preventive powers and anti-crime drives

The figures in Table 13.4 below show the relationship between the use for preventive powers by the police and the anti-crime drives conducted by the police during a particular period of the year. It has been found in the data collected for three consecutive years (1967–69) that certain quarters of the respective years were observed as periods when anti-crime drives were intensified. The figures are :

Table 13 4

Name of police stations	Number of persons proceeded against in											
	1st year (1967)				2nd year (1968)				3rd year (1969)			
	I qr.	II qr.	III qr.	IV qr.	I qr.	II qr.	III qr.	IV qr.	I qr.	II qr.	III qr.	IV qr.
Mohanial ... —ganj.	6	...	4	...	...	2	1	3	...
Gosaingnaj...	3	...	1	...	...	...	...	2	1
Nagram	2	...	...	1	...	...	...	1	...
Mandiaon	3	...	1	...	...	...	...	1	...
Itaunja	2	...	1	...	...	...	...	2	...
Banthra	1	1	1	2	...	...	...	2	...
Maliha- bad	2	4	...	2	1	...	...	...	3	...
Mall	1	...	1	...	...	...	...	...	3
Kakori	3	1	6	2	...	2	3	4	1
Chinhat	1	...	1	...	...	...	1	2	...
	2	26	2	18	6	...	4	5	9	3

The Table above shows that in 1967 out of 28 proceedings launched in the whole year, the number of prosecutions in the fourth quarter of the first year (1967) were 26. There were none in the fourth quarter of the second year (1968). Only three proceedings were launched in the fourth quarter of the third year (1969). In 1968 the highest-figure is for second quarter. The anti-crime drives were organised in the different quarters of the year. The drives covered the period fourth quarter in 1967, the second quarter in 1968 and the third quarter in 1969, respectively. The figures of proceedings in respect of these quarters are higher than those of the remaining quarters of the same year. The intensity of anti-crime drive in a particular year has been as follows:

Table 13.5

Year	Percentage of proceedings launched during the anti-crime drive quarter of the year	Percentage of proceedings launched in other three quarters of the year
1st year (1967)	85.5 (fourth quarter)	14.5
2nd year (1968)	65.0 (second quarter)	35
3rd year (1969)	60.0 (third quarter)	40

The above Table discloses that the high percentage of proceedings launched under section 110, Code of Criminal Procedure against the habitual offenders during certain quarters can be attributed primarily to the special police drives organised to combat the crime in the district during those quarters. The clustering of action in a particular period is closely related to intensified police actions. These actions are not in the nature of controlling the behaviour of habitual offenders as such but they formed part of the police programmes of boosting their image as an effective agency of controlling law and order in their local jurisdictions. The action can also be described as a major administrative activity for containing the rate of crime through the instrumentality of preventive provision of the law. The law is, thus, not being enforced for the purposes of dealing with habitual offenders, but for other purposes.

The decline of percentage in the consecutive three years indicates that the use of the preventive provision for combating the crime has not been found effective. The degree of reliance on this weapon has gradually attenuated. The fact that the power is still being used occasionally by the police for a purpose not intended by the law can be explained only in terms of its utility to the police in the boosting of its public image.

Average number of persons proceeded against under section 110

The above trend is also discernible from the average proceedings launched under section 110, Code of Criminal Procedure in the state of

U.P. covering a period since 1926. The quinquennial average of proceedings has been shown in the Table given below :

Table 13.6

Period	Average number of persons proceeded against under section 110, Cr. P.C. (in U.P.) since 1926.
1926-30	3,233
1931-35	2,950
1936-40	2,789
1941-45	2,574
1946-50	1,465
1951-55	1,817
1956-60	2,929
1961-65	2,144
1966-70	2,241
1971-75	2,021
1975-80	1,312

Conclusions from sample case studies

Sample case studies interestingly reveal that despite the copious rules and departmental instructions issued from time to time, the police adopt their own methods and procedures for detecting habitual offenders and, proceeding against them under the law. The usual practice is to find out a person as habitual offender, whether he is listed as such in the police records or not.

He is apprehended and produced before the magistrate where, on the mere asking of the police, he is bound down to keep good behaviour for the prescribed period. The practice is well settled, howsoever unpalatable it may be. An approach perfunctory to the utmost degree is adopted in dealing with the matters of habitual offenders by way of launching security proceedings under section 110, Code of Criminal Procedure.

Another fact that emerges out of the use and handling of preventive powers in the hands of police is that while the law can usefully be employed to put curbs on anti-social elements, and may be helpful to the police administration in keeping the registered offenders at bay and preventing them from engaging in criminal activities, it also helps them to pick up obliging friends to become willing tools for being

proceeded against section 110, Cr. P.C. with a view to rendering friendly and necessary help to the local police administration for boosting the police image as effective combatants of the menace caused by the habitual offenders. The effects of the proceedings under section 110, Cr. P.C. are innocuous and harmless to the friendly participants, who live under the cover and protection of the police. But the proceedings do contribute towards boosting the figures of arrest made by the police, as well as the figures indicating successful action taken by the local police in their programme of combating the crime in the district. The efficiency of the police is determined by these records which are finally credited towards the achievements of the local police.

The reason possibly explaining casual approach is that the preparation of a case under section 110, Cr.P. C. consumes enormous labour and time, which is not credited towards the reckoning of efficiency of an officer. As a result the police officers are prone to adopt perfunctory approach to the problem. In practice, the use of section 110, Cr P.C. has now assumed the role of increasing the statistics. It is not used for the real purpose of controlling the behaviour and regulating the conduct of seasoned offenders.

Comment on the utility of section 110, Cr.P.C. in regard to habitual offender

The above resume of working of the preventive provisions of the Code of Criminal Procedure gives an impression that the police endeavours to control and regulate the conduct of habitual offenders have not yielded desired results so far as section 110 is concerned. This may be due to the lack of a methodical approach in weaning out the hardened offender from the total lot of undesirable elements. The police is unwittingly leaving potential offenders and known depredators out of the net of the Habitual Offenders Act by not resorting to appropriate legal steps needed for notifying them as habitual offenders. The remaining exercise-dealing with habitual offenders under the Cr.P.C—is reduced to ineffectiveness because the law is being used more frequently to control the unqualified and underqualified offenders, while the qualified habitual offenders continue to operate with consequent harm to the society. The uncontrolled behaviour of habitual offenders contributes to the mounting up of tensions and anxiety in the community. The overt and covert acts of the known offenders consequently threaten the society in the shape of increased crime rates

Such increase of crime rate cannot be met with by an increase in the strength of police personnel. While the paucity of personnel may be a genuine handicap to the police to some extent, an increase in the police strength with every increase of crime rate cannot be a practical

solution to the problems arising out of alarming threats from the unregulated behaviour of the habitual offenders.

Need for separation of functions

One may at this stage, be permitted to offer certain suggestions for remedying the mischief that has been highlighted in the preceding paragraphs. The offences that find a prominent place in the laws relating to habitual offenders are really the offences to be attended to. It is only persons committing these offences who are to be subjected to preventive action. The administration of preventive power by the police, without properly setting up a machinery to screen and identify persons belonging to the class of habitual offenders is fraught with considerable mischief. At present, both the functions are vested in one and the same agency. What is required is separation of the two functions. Reliance on the use of police power to prevent the notified offenders from engaging in such vocation—and that too in a half hearted manner—does not seem to be convincing mode of tackling the problem effectively. It may be that in the absence of any express concern or societal reaction to the issue of dealing with the habitual offenders, the traditional approach of solving the issue through the police agency will continue to prevail. However, by vesting the police with preventive powers in relation to habitual offenders and asking them to produce results without, at the same time, insisting that they should abide by the administrative checks and directions, a serious dent is made on the rule of law. An anomalous consequence of emphatic expectations from the police to curb the anti-social activities of the habitual offenders is the use of power in a manner that causes serious prejudice to the citizenry whose interest the police and the system seek to protect.