

Chapter XIV

OPERATION OF STATE HABITUAL OFFENDERS' ACTS : A FIELD STUDY

Area covered by the field study

With a view to eliciting detailed information on several points relating to the working of habitual offenders laws of the states, a sample study was conducted in regard to the States and the Union Territories of—

- (a) Karnataka,
- (b) Kerala,
- (c) Andaman & Nicobar Islands,
- (d) Himachal Pradesh, and
- (e) Haryana.

Points covered by the field study

The information sought in the field study covered the following points :

- (1) The total number of habitual offenders in each state in the years 1973, 1974 and 1975. (Table 14.1, *infra*).
- (2) The various sections of Indian Penal Code under which charges were framed in each state against habitual offenders. (Table 14.2, *infra*).
- (3) Number of times each habitual offender was convicted/proceeded against in each state (Table 14.3, *infra*).
- (4) Whether any registers for maintaining records of the habitual offenders were maintained in each of the sampled states. (Table 14.4 *infra*).
- (5) Whether any notice was served on the habitual offender to appear before the district magistrate (or any other officer appointed by him) to furnish information about finger prints, palm impression, foot print, photographs, *etc.* (Table 14.5, *infra*).
- (6) Whether the habitual offender appeared or did not appear before the district magistrate (or the appointed officer) in response to the notice served to him for furnishing information regarding finger prints, plam impression, foot prints and photographs and if not what action was taken. (Table 14 6, *infra*).

- (7) Whether any show cause notice was served on the person proceeded against to prove himself as not being a habitual offender. (Table 14.6, *infra*).
- (8) Whether a habitual offender against whom an order was passed intimated his absence from his ordinary residence or intended change of residence to the district magistrate or superintendent of police; if so, the number of times. (Table 14.8, *infra*).
- (9) How many times a habitual offender was found missing from his residence, and action taken thereon. (Table 14.9, *infra*).
- (10) Whether the movement of habitual offenders was restricted. If so, the period of restriction. (Tables 14.10 and 14.10A, *infra*).
- (11) Whether any direction was issued by the district magistrate/superintendent of police against habitual offenders for reporting to their offices once in a month or more frequently and how many times he reported. (Tables 14.11, 14.11A and 14.11B, *infra*).
- (12) Whether any habitual offender was sent to corrective settlement. (Table 14.12, *infra*).
- (13) Whether he was transferred/discharged from one corrective settlement to another settlement for violation of the Act.
- (14) Whether he was again sent to corrective settlement for violation of the Act.
- (15) Whether he was found outside the corrective settlement or restricted area, if so, the number of times and action taken thereon. (Tables 14.15 and 14.15 A, *infra*).
- (16) Whether after completion of his tenure, a habitual offender was required registration. (Table 14.16, *infra*).
- (17) Whether he again committed offences; if so, the number of times. (Table 14.17 *infra*).
- (18) Whether the order restricting movement was cancelled after due consideration.
- (19) Whether there was any provision of domiciliary check up under the Habitual Offenders Act, if not, what difficulties were experienced in each state in the absence of such a provision.

Information how elicited

To elicit the above information, questionnaires were mailed to the superintendents of police of various districts in each state with a request to fill in and send the questionnaires back.

In all, 315 filled-in questionnaires were received back, as follows :—

State	No of questionnaires
Karnataka	175
Kerala	114
Andaman & Nicobar Islands	10
Himachal Pradesh	3
Haryana	13
Total	315

Unfortunately, information on some of the queries put in the questionnaires was not received from some of the states or (in some cases) from any of the states. Such information as has been received is presented in this chapter, in the form of tables, with brief comments. The arrangement of the discussion follows, as far as possible, the order in which the queries put have been listed above.

(1) Number of habitual offenders

Statewise break-up of the total number of habitual offenders for the years 1973, 1974 and 1975 is presented below :

Table 14.1

S.No. State	Percentage of habitual offenders to total habitual offenders in all the states		
	1973	1974	1976
1. Karnataka	75.0	60.8	62.4
2. Kerala	21.0	35.6	38.0
3. Andaman & Nicobar Islands.	3.5	3.2	4.1
4. Himachal Pradesh*	0.5	0.4	0.5
5. Haryana	Nil reply	Nil reply	Nil reply
Total number of habitual offenders	227	250	194

* Himachal Pradesh has no Habitual Offenders Act. The habitual offenders in this case are persons proceeded against under the Code of Criminal Procedure. The questionnaire was replied to by the H.P. Police administration.

The sample reveals that

- (a) The total number of habitual offenders for the states together decreased at the end of the period under reference, in spite of a slight rise in during 1974.
- (b) The southern states (namely, Karnataka and Kerala) registered a higher percentage than the other states.

Note:—There was 'Nil' report from Haryana. Either the required records were not maintained, or they were not easily available to those who replied to the questionnaire.

(2) Section of the Indian Penal Code or the Code of Criminal Procedure under which habitual offenders were charged.

The following table shows the number of times the habitual offenders were charged under a particular section of the Indian Penal Code, and the Code of Criminal Procedure in all the five states taken together.

Table 14.2

I.P.C./Cr.P.C. section	No. of times charged
380, I.P.C.	390
457, I.P.C.	328
379, I.P.C.	177
502, I.P.C.	104
411, I.P.C.	36
461, I.P.C.	35
354, I.P.C.	28
176, I.P.C.	14
420, I.P.C.	27
381, I.P.C.	11
511, I.P.C.	13
414, I.P.C.	10
406, I.P.C.	6
324, 392, 34 I.P.C.	5 times each.
395, 459, 224, I.P.C.	3 times each.
302, 447, 408, 467, 409, 475, I.P.C.	2 times each.
46, 110, 193, 107, 117, Cr.P.C.	2 times each.
356, 398, 384, 451, 456, I.P.C.	1 time each.
407, 426, 477, 452, 434 I.P.C.	1 time each.
458, 468, 465, 471, 419, I.P.C.	1 time each.
403, 448, 502, 119, 294, I.P.C.	1 time each.
Excise Act.	1 time each.
375, I.P.C.	Nil.

The above table reveals the following noteworthy points :

- (a) Sections 380, 457, 379, and 502 of the Indian Penal Code were most extensively resorted to.
- (b) No offender was charged under section 375 of the Penal Code (rape).
- (c) Across the five states, in a period of three years (1973 to 1975), habitual offenders were charged with offences under several sections of the Indian Penal Code and the Code of Criminal Procedure, or some other local Act in the states concerned.
- (d) On the average, a habitual offender was charged with offences under several sections of the code.

The frequency or otherwise of the use of a particular section of the Penal Code provokes thought. Why a particular section of the code was used more frequently, while some other section was used more sparingly can be explained only in terms of administrative policy. Perhaps it is easier to charge the habitual offenders for those particular offences.

The information relates to 315 habitual offenders of the five states. Taking the total number of charges, they were charged nine times on the average for an offence or the other, falling in the broader spectrum of habitual offences.

(3) Habitual offenders—number of times convicted

The break-up of average number of times a habitual offender was convicted/prosecuted in each state is presented below :—

Table 14 3

State	No. of times on an average a habitual offender was convicted/ prosecuted	Total no. of habitual offenders	Total no. of times convicted/ prosecuted
Karnataka	9	175	1662
Kerala	8	114	857
Andaman & Nicobar Islands	8	10	77
Himachal Pradesh	8	3	25
Haryana	4.5	13	56

In the absence of information about the factors that influenced/determined habitual offences, it is difficult to explain why, in the Karnataka state, the average number of times a habitual offender was convicted/prosecuted turns out to be higher. However, the fact that the overall average was nine times calls for an intensified constructive approach for reducing the phenomenon of habitual offences. It calls for further enquiry in greater detail of this aspect of the problem.

The study further reveals that in the State of Karnataka, some habitual offenders were convicted/prosecuted as many as 29 to 45 times. What has to be done with these "hard core" convicts despite the Habitual Offenders Act being in force ?

(4) Whether any record maintained

Table 14.4

Coming to the maintenance of records, records relating to the offenders were maintained in 100% cases in the States of Kerala, Andaman & Nicobar Islands and Himachal Pradesh. In Karnataka, the registers were maintained in 91 per cent of cases. In Haryana, they were maintained in 67 per cent of the convicts.

The foregoing data does not, however, convince one that the records in relation to habitual offenders are complete in all respects in all the states. The very fact that response to the questionnaire, despite repeated efforts, remained confined to only five states suggests a lack of records maintained with the police administration.

The information that is compiled in the relevant police records perhaps rests on sketchy details initially kept by the police administration for the purposes of listing of the names, addresses, parentage, antecedents and other necessary particulars required by the police in a routine way for dealing with the pronounced anti-social characters. Thus, there is apparent a deficiency in the records speaking both qualitatively and quantitatively.

(5) Whether any notice was served to the habitual offender to appear before district magistrate, etc.

The following table gives particulars whether any notice was served on the offender to appear before the district magistrate or any other officer appointed by the district magistrate to furnish information about finger prints, palm impression, foot prints, photographs, etc.

Table 14.5

State	Whether notice served		Total no. of cases.	Cases not reported.
	Yes%	No%		
Karnataka	83.4	16.6	175	...
Kerala	12.4	87.7	105 (excluding cases not reported)	4 cases
Andaman & Nicobar Islands.	...	100	10	...
Himachal Pradesh	...	...	Nil (including cases not reported)	3 cases
Haryana	36.4	63.6	11 (excluding cases not reported).	2 cases

From the above table, it is seen that in Andaman & Nicobar Islands, 100% of the cases went without any notice served. This is followed by Kerala—87.6% cases. The State of Haryana did not send the notice in 63.6% cases, while Karnataka did not comply with the procedure of notice in 16.6% cases.

(6) Appearance or otherwise of convicts

The data pertaining to appearance or non-appearance by the habitual offender before the district magistrate in response to the notice served on him for furnishing information regarding finger prints, palm impression, foot prints, photographs, *etc.* and the action taken thereon, has been analysed and presented in the following table.

Table 14.6

	Karnataka	Kerala	A. & N. Islands	Himachal Pradesh	Haryana
No. of habitual offenders on whom notice was served	146	10	Nil	No information was furnished.	4
No. of habitual offenders who appeared before the district magistrate in response to the notice	108 i.e. 74%	7 i.e. 70 %	...	No information was furnished.	3 i.e. 75%
No. of habitual offenders who did not appear before the district magistrate	36 i.e. 25%	2 i.e. 20 %	...	...	...
Action not taken against the absentees.	Not reported	Not reported	...	...	} i.e. 25%

The above table reveals the following features :

- (a) 25% and 20% of the convict habitual offenders in Karnataka and Kerala respectively did not appear before the district magistrate in response to the notice.
- (b) Quite surprisingly, no information was furnished regarding the action taken against them except in Haryana. Probably, no action was contemplated or, in the alternative, no record was kept of the action taken.

- (c) In Himachal Pradesh, either no records were maintained, or no efforts were made seriously to serve notice.

(7) Whether any show cause notice was served on alleged habitual offender to prove himself as not being a habitual offender.

The analysis of data received in reply to this query is presented in the following table :

Table 14.7

State	Show cause notice served		Total no. of cases	No. of cases for which no information was furnished
	Yes %	No %		
Karnataka	50	50	165	20
Kerala	90	10	88	26
A&N. Islands	...	100	10	...
Himachal Pradesh	...	...	...	3
Haryana	11	89	9	4

The above table reveals the following features :

- (a) In Andaman & Nicobar Islands, no show cause notice was served in any case. It was not served in 89% cases in Haryana and 50% cases in Karnataka. In Kerala, show cause notice was not served in 10% cases.
- (b) In respect of Himachal Pradesh, no information was furnished. In some other states, information was not furnished for some cases though furnished for other cases.

(8) Whether the habitual offender intimated his absence from his ordinary residence or intended change of residence to district magistrate or superintendent of police ?

State-wise information relating to the above query is given in the following table :

Table 14.8

State	Intimated %	Not inti- mated %	Total no. of cases for which informa- tion was furnished	No infor- mation was fur- nished
Karnataka	...	100	156	19
Kerala	16	84	108	6
A.&N. Islands	...	100	10	...
Himachal Pradesh
Haryana	...	100	2	11

This table reveals the following features :

- (a) 100% habitual offenders in the States of Karnataka, Andaman and Nicobar Islands and Haryana and 84% in Kerala did not inform the district magistrate/superintendent of police about absence from residence or intended change of the residence.
- (b) In some states, above information was not furnished in regard to some cases.

(9) Number of times a habitual offender was found missing and action taken thereon

Information as to the number of times a habitual offender was found missing, and the action taken in that regard is tabulated below.

Table 14.9

State	No. of habitual offenders		Total no. of habitual offenders	No. of cases in respect of which no information was furnished
	Miss- ing. (%)	Not miss- ing. (%)		
Karnataka	33	67	164	29
Kerala	37	63	107	7
A.&N. Islands	...	100	10	...
Himachal Pradesh	...	...	...	3
Haryana	5	50	10	3

The table reveals the following features :

- (a) In Karnataka and Kerala 33% and 37% of the habitual offenders respectively were missing. In Haryana, the percentage comes down to 5%.
- (b) The needed information was not furnished in as many as 29 cases in Karnataka, 7 in Kerala and 5 each in Himachal Pradesh and Haryana.

(9A) Frequency of missing of the habitual offenders in various states

Information as to the above point is tabulated below :

Table 14. 9A

No. of times found missing	Number of Offenders missing				
	Karnataka	Kerala	A. & N. Islands	Himachal Pradesh	Haryana
1.	17	18	...	...	...
2.	3	10	...	...	2
3.	5	6	...	...	...
4.	...	2	...	...	...
5.	5	1	...	...	...
6.	...	1	...	...	...
7.	5	...	...	...	...
8.	1	...	...	...	...
9.	...	1	...	...	...
10.	1	...	...	...	...
11.	...	1	...	...	...
12.	...	...	...	...	...
No. of cases information not furnished.	11				

(9B) Action taken in the various states against habitual offender found missing

Information on the above point is tabulated below :

Table 14.9 B

Type of action	Karnataka	Kerala	Haryana
Offenders' verification cards...	18	...	...
under H.O. Act...	11	...	...
Arrested...	2	11	...
No action was taken...	...	1	...
No information was furnished...	17	28	2
Bad character...	...	...	3

(10) Whether his movement was restricted, if so, the period of restriction

Restriction of the movements

Table 14.10

State	Restricted %	Not restricted %	Total no. of H. Os.	No. of cases information not furnished
Karnataka	24	76	152	23
Kerala	16	84	105	8
A. & N. Islands	...	100	10	...
Himachal Pradesh	...	...	...	3
Haryana	11	89	9	4

From the above table, it appears that the percentage of cases in respect of which movement was not restricted ranged from 76% in Karnataka to 100% in Andaman and Nicobar Islands.

Period of restriction

Information as to the period of restriction is tabulated below :

Table 14 10A

Period No. of years	No. of habitual offenders		
	Karnataka	Kerala	Haryana
1	...	1	...
2	...	2	...
3	13	1	...
4	...	1	...
5	1	1	...
8	...	1	...
12	...	1	...
No information was furnished	23	9	1

(11) Number of times reported

The number of times of offenders reported is tabulated below for the state of Haryana.

Table 14 11

No. of times.	Haryana
	No. of habitual offenders
8	1
15	1
17	1
28	1
Nil	59

(12) Whether any direction was issued from district magistrate/superintendent of police for reporting to their offices once in a month or more frequently? How many times the habitual offender reported?

Information on the above point is given below. :

Table 14.12

State	No. of cases in respect of which direction was issued		Total no. of cases	No. of cases in respect of which no information was furnished
	Yes %	No %		
Karnataka	42	58	149	26
Kerala	...	100	...	6
A. & N. Islands	10	90	10	...
Himachal Pradesh	...	...	...	3
Haryana	100	...	1	3

The above table yields the following analysis :

- (a) In Kerala, in respect of 100% of the cases no direction for reporting was issued.
- (b) This is followed by 90% in A. & N. Islands and 58% in Karnataka.

(13) Period of reporting

The period of reporting is tabulated below :

Table 14.13

Period of reporting	Number of cases		
	Karnataka	A. & N. Islands	Haryana
Daily	8	...	...
Monthly	23	...	...
No information furnished.	22	1	1

(14) Whether sent to corrective institution

Table 14.14

States	Yes		Total no. of cases	Information not furnished
	Yes	No		
Haryana	...	100	8	5
Karnataka	5	95	153	22
Kerala	...	100	107	7
A. & N. Islands	3
Himachal Pradesh	...	100	10	...

This table shows the following features :

- (a) 95% to 100% of the habitual offenders were not sent to corrective settlements.
- (b) In Karnataka, 5% of habitual offenders were sent to corrective settlements.

(Table 13.13 and 13.14 No information received).

(15) Whether the habitual offender was found outside the corrective settlement or restricted area ? If so the number of times and action taken thereof

Table 14.15

States	Yes	No	Total no. of habitual offenders.	No information furnished.
Karnataka	2	98	150	25
Kerala	8	92	85	29
A. & N. Islands	...	100	10	...
Himachal Pradesh	...	...	...	...
Haryana	...	100	9	4

The table shows the following features :

- (a) Only a meagre percentage of habitual offenders was found outside the corrective settlement or restricted area, the percentage being 2% and 8% in (Karnataka and Kerala respectively).
- (b) In many cases, no information was provided

(15A) Number of times the habitual offender was found either outside the corrective settlements or in the restricted area.

Information on the above query is as follows :

Table 14.15 A

No. of times the habitual offender was found either outside the corrective settlement or in the restricted areas.	No. of habitual offenders in	
	Kerala	Karnataka
1	1	2
2	—	2
3	1	—
4	1	—
5	—	—

Of the three habitual offenders found outside the corrective settlement or in restricted areas as per above table, one was traced and remitted, one was arrested and, in respect of one, no information was furnished.

(16) Whether after completion of the tenure, the habitual offender was required to secure registration?

Information on the above point is as under :

Table 14.16

- (a) In Karnataka, 46 persons out of 154 were required to secure re-registration, while, in respect of 21 habitual offenders, no information was furnished.
- (b) In Kerala, 84 habitual offenders out of 106 were required to secure re-registration, while, in respect of 8 habitual offenders, no information was furnished.
- (c) In Haryana, eight were required to secure re-registration, while, in respect of 3 habitual offenders, no information was furnished.
- (17) Whether the habitual offender again committed offences ?**
- (a) In Karnataka, 35% of the total 144 habitual offenders committed offences again, followed by Kerala 31% out of 103 and Haryana 14% out of 7.
- (b) No information was reported in respect of 32 habitual offenders in Karnataka, 11 in Kerala and 6 in Haryana on this point.
- (c) Information for Himachal Pradesh on the above point was not furnished.

The number of times the habitual offenders committed offences

Information on above point is as under :

Table 14.17

No. of times the habitual offenders committed offence	No. of habitual offenders in		
	Karnataka	Kerala	Haryana
1	11	11	...
2	9	9	...
3	3	2	...
4	4	2	...
5	4	2	...
6	2	3	...
7	1	...	...
8	1	1	...
9	1	...	...
10	...	...	...
13	2	...	...
16	1	...	...
24	1	...	...
29	1	...	...
No information was furnished.	10	2	1

Observations

Though the foregoing data (Table 14.4) may create the impression that the records in relation to habitual offenders are maintained with the police administration, some doubt is created by experience and observation. The enormity of clerical work involved in the process of maintaining records, coupled with the paucity of police personnel and the increased load of work upon them, account for this state of affairs. The absence of records or the maintenance of incomplete records gives a cover to the unlawful or overzealous executive actions purporting to combat the criminal activities of the habitual law breakers.

It is in this context that one should point out that actual experience shows that serious lapses are often committed. The most glaring lapse is that of non-compliance with mandatory provisions of the law which require service of show cause notice on the offenders. [See Tables 13.5-13.7.] The casualness of approach exhibited in this regard is a serious matter, as the bypassing of this procedure is obviously prejudicial

to the habitual offender against whom the proceedings are proposed to be taken. It also cuts at the very roots of fairness, a necessary constituent, which is implicit in all the criminal proceedings.

The above data also brings to the fore the cavalier manner of exercising vigilance over the offenders in a police jurisdiction. The high percentage of absenteeism of the offenders from a jurisdiction, and the non-action by the police (see Tables 13.8, 13.9, 13.9A and 13.9B), hardly promote the underlying objective of the law relating to habitual offenders. These laws are preventive in nature. By keeping a hawkish eye on the offenders as well as by putting effective restrictions on their movement, the object of the law can well be achieved. However, the vigilance and regulatory modes proscribed under the law are not properly utilised and the law can, therefore, be hardly expected to produce the desired results.

The reformatory measures contemplated under the state laws also do not reflect a very happy situation. Table 14.14 shows that the practice of sending these offenders to the reformatory settlements is almost non-existent, inasmuch as 95% to 100% of habitual offenders were not sent to these institutions. The success or failure of these methods cannot, therefore, be satisfactorily gauged. It is pertinent to note that generally the reformatory institutions are also not fully equipped to take in full number of the inmates that would flow if the law were to be enforced effectively.

Lack of resources and trained personnel, as well as the lack of dynamic approach in making use of these institutions, seem to constitute perennial source of inefficiency of these bodies.

The operational study of the law, conducted through the sample data, discloses that *ad hocism* pervades the enforcement of the law against the habitual offenders. The use of the law has been in a random way,—and that too for the ulterior purpose (in some cases) of reinforcing the awe and authority of the local police administration. This has resulted in by-passing the mandatory provisions of fairness in the application of the law.

The impunity with which the offenders absent themselves from the local jurisdictions, and also the indifferences shown by the administration in this regard (see Tables 14.8, 14.9, 14.9A and 14.9B), evidently establish that the avenues available for checking the hard core criminality are not fully exploited. The position is the same with regard to the reformatory provisions. The basic fact that emerges from the foregoing operational study is that the twin purposes of preventive police action and reformatory regulation of the conduct of habitual offenders contemplated by the laws on the subject, are given the lowest—even nil—priority by the officials in the enforcement of the law.