

Chapter XV

CONCLUDING REMARKS

An evaluation of the working of the existing laws leave much scope for improvement in their administration. The field studies have shown that the records and information about the history sheeters are neither complete nor are they dependable. Active lists of habitual offenders are seldom maintained. The use of stooges, to boost up the figures of launching security proceedings, aims to meet the administrative need of swelling the police performance rather than to combat the menace. It has already been noticed that inefficacy of the preventive provisions to deal with habitual offenders lie more in the non-enforcement or improper enforcement of the law.

The working of the laws on habitual offenders also portray a dim picture. It may not be an exaggeration to say that the law is not existing in reality. The habitual offenders as envisaged under the narrow definitional clause of the state form a very small part of the criminality in the society while measures to deal with them demand a higher percentage of time and resources of the police personnel.

Accordingly, the administrative policies are guided by the realities of the situation, which result in inaction in the matter of implementation of law. By scrapping the state laws the police is not going to lose any power to deal with the problematic anti-social elements of the type envisaged under the laws. The positive results would be that the absence of these laws would eliminate the constitutional problems raised, as discussed earlier and also the problems raised by the existence of two sets of laws viz; the Code of Criminal Procedure and the state law.

The need to deal with the hard core of habitual offenders has been rediscovered by the new Code of Criminal Procedure. They are termed as "socio-economic offenders" and to use the power against them is imperative. The police and prosecution are yet to apprise themselves with the modalities of dealing with this type of anti-social element. The lead has been given by S. 110 of the Code of Criminal Procedure in this respect. The difficulties are yet to be surmounted because this class of habitual offender is the product of the changing social order. Such an offender has a potentiality to inflict greater harm to the society than the traditional habitual offender, contemplated to be so in the definitional clause of the state laws, and he has far more resources to shield himself against the use of criminal process. Attention need also be focussed on these sociological aspects of the problem. The preventive provisions

contained in the Code of Criminal Procedure 1973 (Ss. 110-117) form a complete code to deal effectively with the problem. The administrative modes adopted by the police for surveillance and restricting the movements are validly framed within the Police Act 1861. The police actions in keeping the record and information about a habitual offender and prescribing a procedure to deal with him are legitimated by the rules made under the Police Act 1861. It is the socio-economic type of offender against whom the law and administration should gear up the machinery to meet the challenge posed by the class of habitual offenders.

The laws on the subject, whenever enacted, did not care to encompass in the wider amplitude the newer trends and tendencies of several class of persons. They are the ones who, when committing the breaches of law-designedly and with contempt, have also acquired status and power to meddle with the state machinery in their favour. These persons have a vested interest in the commission of crime not for their economic need, but for pure economic greed. Such hard core of anti social elements are known to the community as socio economic offenders. But the state legislatures have not identified them as habitual offenders. The state laws thus are unable to strike at the real culprits, whose habit and repeated actions need more surveillance, control and regulation in order to combat the menace. The legislative scope of the present section 110 Code of Criminal Procedure equips the law enforcement agencies with necessary power to deal with socio-economic offenders, but investigations have shown that hardly any administrative steps have so far been taken. While a petty thief continues to be the concern of the police for launching proceedings, the big sharks of industry and business are to be noticed nowhere as habitual offenders for their serious and continued violations of foreign exchange regulations, custom laws and other legal measures aimed at checking corruption, hoarding, and profiteering.

One of the notable features of the state laws relating to habitual offenders is that the law treats a person as a habitual one, only if he repeats the commission of offences listed in the schedule appended to the Act. A perusal of the schedule indicates that the offences are those which relate to governmental currency, property and offences against the persons. In addition to this the local laws like prohibition, gambling, living on the earnings of the prostitute are also included in the schedule.

Although the offences against persons are included in the schedule, the emphasis is largely meant to prevent committing of such offences as form part of a larger anti-social racket. In other words, a kidnapper ought to focus more attention as a socio-economic offender than a murderer because of the former's link with gangs who trade in human flesh for immoral purposes. The basic idea in including the local offences is also to put a check on such anti social activities, which are done in a

concerted manner for purposes of economic gains. The inclusion of excise offences, gambling or living on the earnings of a prostitute tend to substantiate this assumption. A habitual offender is not only the one who repeatedly engages in a career of crime but who is also in the habit of linking with other persistent offenders, to participate, manage and organise crimes for pecuniary gains.

The nature of offences extracted from the three chapters of the Indian Penal Code, though quite extensive in the listing of offences, invariably underline the fact that the law aims to control offenders who have economic motives in the perpetration of crimes. The attempt of the legislature signify that it has vaguely realised that the hard core of criminality which often seeks to inject imbalances and cause alarm in the society are to be found in the category of such persons who engage in the career of crime, both individually and in a concerted way, primarily for the purpose of making a living, and subsequently to attain economic security through greed. These types are now identified as socio-economic offenders from whom the potential danger of wrecking the society is forthcoming.

Today it is the class of highly respectable and comfortable placed individuals or group of persons who come within the purview of the socio-economic offenders. They are responsible for indulging in the breaches of law for unlawful economic gains and thus create imbalances in the social order. They are influential enough to keep the enforcement machinery away from taking cognisance of their misdeeds and much less to initiate criminal proceedings against them.

In view of the above, it can be said that state laws relating to habitual offenders has miserably failed both in the scope and implementation to achieve the desired results.

The mode of identifying the habitual offender under the state laws is too narrow. The new Code of Criminal Procedure has shown greater awareness in this direction by expanding the category of habitual offenders in S. 110 of the Code. The absence of this category of offenders in the state laws relating to habitual offenders makes the state law archaic and devoid of utility in dealing with the arch enemies of the society who are posing the greatest threat to the social order.

Sociologically speaking the socio-economic offender is the concern of law enforcement agency and it is the socio-economic offender who is to be emphasised as the main subject of the law relating to habitual offender. The newer trend can be discerned from S. 110 of the Code of Criminal Procedure 1973. This must provide cue to the state legisla-

tures to update their laws, if necessary, and to streamline the enforcement machinery and also to formulate such rules and administrative procedure as may enable the law enforcement agency to deal effectively with this malaise. As pointed out earlier the provision of newer code of criminal procedure is enough to meet the current challenge, and makes the state laws on the subject redundant.