Habitual Offender Laws in India

GS II – Governance & Social Justice

How the habitual offender laws originated and evolved in India?

- **Habitual offender** – A person repeatedly convicted of crimes.

*According to National Crime Records Bureau's prison statistics 2022 - About 1.9% of India's 1.29 lakh convict population have been classified as "**habitual offenders**". The highest proportion was seen in Delhi, where 21.5% of convicts are classified as such.*

- **Beginning of criminalising communities** – It began with *Regulation XXII of 1793* in India.
- It gave magistrates "summary powers" to put to work or imprison certain communities or tribes based on suspicion alone.
- **Evolution** – The *Indian Penal Code of 1860* and the *Criminal Procedure Code of 1861* set up the mechanism to maintain a register of "dacoits and thugs" which culminated into Criminal Tribes Act.
- **Criminal Tribes Act (CTA), 1871** – The ***phrase 'criminal tribe' was 1st referred,*** and the system of registration began.
- It provided for "a gang, a tribe, or a class of people" to be declared criminal.
- In 1924, it was applied to all of colonial India which increased the number of communities declared "criminal" exponentially.

Criminal Tribes Act Enquiry Committee Report (1949-50) *recommended the repealing of the Criminal Tribes Act and encouraged "central legislation applicable to all habitual offenders without any distinction based on caste, creed, or birth".*

- **Independent India** – In 1952, based on Criminal Tribes Act Enquiry Committee Report, the Government of India *repealed all criminal tribes laws* across the country.
- It left the communities notified under these laws to be classified as "denotified, nomadic, and semi-nomadic" (DNT, NT, SNT) tribes.
- **In states** – The Madras Restriction of Habitual Offenders Act, 1948, was extended *to Delhi in 19*51.
    - Rajasthan passed a similar law in 1953, and over the next 2 decades Andhra Pradesh, West Bengal, Karnataka, Goa, Himachal Pradesh, Uttar Pradesh, etc. had adopted laws.

- **Reframing of definition** – All state laws moved away from the premise of classifying communities as "prone to crime", by defining a "habitual offender" in terms of the convictions they have had.

How states in India police habitual crimes?

- **Defines schedule of crimes** – Being a thug, belonging to a gang of dacoits, living on the earnings of prostitution, and half-a-dozen entries on lurking.
- **Procedural structure** – Registers were maintained, and rules and regulations were formulated by States on how 'habitual offenders' were to be treated within prisons.
- It lead to *jail manuals* across the country adopting the language of "habitual offenders".
- Some of them explicitly allowed for erstwhile "criminal tribe" community members to be designated as "habitual offenders".
    - For example in Rajasthan.

What is the current response of its legality in India?

- **Supporting states** – This law *continue to operate across at least 14 States and Union Territories* in India.
    - Gujarat, Uttar Pradesh, Delhi, Goa, Rajasthan, Punjab, Himachal Pradesh, Jammu and Kashmir, Karnataka and Telangana, among others.

Supporting State	Supporting Argument
Gujarat	It has claimed that this law "does not intend to" harass or harm any community.
Uttar Pradesh	The provisions of the habitual offender legislation are already covered under the U.P. Control of Goondas Act, 1970, and hence it does not matter either way.
Goa	Since there are no denotified, Nomadic and Semi-Nomadic Tribes in the State, there is no need for repealing the law.

> *In 1998, the custodial death of Budhan Sabar, a member of a denotified community in West Bengal, led to national outrage over the concept of habitual offenders" and how it was being used by the police.*

- **Opposing states** – Some states says that the law is *practically redundant and not implemented* by them.
    - Punjab, Andhra Pradesh, and Telangana.
- A total of *9 States* have reported that there are *no "habitual offender" laws* in their State, or that they had never been enacted, or that there were no tribals in their jurisdictions.
    - West Bengal, Assam, Mizoram, Tripura, Bihar and Sikkim.
- Further, the legislation had been *repealed in Haryana and Ladakh*.
- **Supreme Court** – In 2024, on caste-segregation in prisons, it had *questioned the very basis* of a "habitual offender" classification.

- It noted that the provisions was "*constitutionally suspect",* given the "vague and broad language", "which is used to target members of denotified tribes".
- It had *asked States to reconsider the use*, further asking if it was needed at all.

Opposing States	Current trend
Punjab	It has not maintained a register of habitual offenders, nor have any orders been passed under it in the last 5 years.
Andhra Pradesh	No one in their current jail population is in custody under the habitual offender law.
Odisha	No cases have been registered under this law in the last 5 years.

What lies ahead?

- **Reviewing relevance** – States should conduct an objective analysis of the relevance of habitual offender laws.
- **Fair legislation** – States can ensure that legal frameworks do not stigmatise entire communities.
- **Empowerment programs** – Alternative crime-prevention methods like rehabilitation and social reintegration programs can be initiated.
- **Sensitisation** – Training can be given to police forces to prevent discrimination against Denotified Tribes.

Recommendations to Repeal Habitual Offender Laws
• **National Human Rights Commission 2000** – It formed an Advisory Group, concluded that these laws can be repealed. • **United Nations Committee on the Elimination of Racial Discrimination 2007** – It noted the way "habitual offender" laws were being applied and called for its repeal. • **National Commission on DNT, SNT, NT headed by B.S. Renke 2008** – It noted the negative effect of the laws on the lives of these communities. • **Xaxa Committee (2014)** - The tag of criminality attached to DNTs and to the nomadic way of life of nomadic tribes persists to the present day.

References

1. The Hindu| Legality and Status of Habitual Offender Laws in India
2. The Hindu| Historical Background of Habitual Offender Laws

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