

## Expectations versus Reality: Sex Offender Registration in India and the United States

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### Abstract

The online registration of sex offenders and the maintenance of these databases is a subject of concern. Although it is imperative to track sex offenders and maintain their records as a measure to deter crime, this process can affect or even prevent the offenders' reformation and violate their right to privacy. Further, according to some, inclusion in these databases leads to a lifetime branding of offenders. India took the initiative in 2018 to reduce sex offender recidivism and now tracks offenders through a registry that is not open to the public. In contrast, in the United States, online sex offender registration databases have been available to the public for many years. The purpose of this paper is to compare the purposes and legal frameworks of sex offender registries in India and the United States, focusing on the impacts of these registries on the offenders and their potential for rehabilitation. Emphasis is placed on the United States, as its registration requirements have been in place substantially longer than in India. The author concludes that, although these offender registries are designed to serve as a mode of crime prevention, they are not necessarily yielding optimal results.

### INTRODUCTION

In the last few decades, the registration and tracking of sex offenders has become a quintessential part of criminal justice systems across the globe. The main goal of these efforts has been to reduce instances of sexual violence. Sex offenders are usually viewed as individuals who lack empathy and can commit these kinds of crimes again.<sup>1</sup>

Indeed, it is generally believed that sex offenders are always at risk of criminal recidivism. In India, increasing instances of sexual violence led the Indian government to create a database where offenders can be tracked, thus conceivably averting new crimes. A digital database of sex offenders was proposed after the dreadful 2012 Nirbhaya incident<sup>2</sup> so that police and other law enforcement agencies could be vigilant about the sex offenders in their jurisdictions and track their whereabouts. Accordingly, the National Database on Sexual Offenders (NDSO) was created on September 20, 2018. Under section 79(3)(b) of the 2000 Information Technology Act, the database is exclusively available for use by law enforcement agencies.

In the United States, sex offender registration requirements have been in place much longer than in India. The Sex Offender Registration and Notification Act (SORNA) was codified in 2006.<sup>3</sup> The law provides a

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<sup>1</sup> Mark E. Olver and Stephen C. P. Wong, "Psychopathy, Sexual Deviance, and Recidivism among Sex Offenders," *Sexual Abuse: A Journal of Research and Treatment* 18, no. 1 (2006): 65–82.

<sup>2</sup> *Mukesh & Anr. v. State for Nct of Delhi & Ors.* (2017) 6 SCC 01. This is commonly referred to as the Nirbhaya Rape Case, wherein a young girl was picked up at night and gang raped by six persons including one minor in a moving bus. She was later dumped on the roadside in a profusely bleeding condition after having been brutally tortured.

<sup>3</sup> 34 U.S.C. § 20901 *et seq.*

comprehensive set of minimum standards for the registration of sex offenders and subsequent notification requirements. The United States, however, is the only country in the world where sex offenders' information is available online to the public.<sup>4</sup>

The primary purpose of this study is to compare the legal frameworks of sex offender registries in India and the United States while also focusing on the impacts of these registries on offenders. To achieve this, the paper presents a systematic synthesis of laws and data available on sex offender registries in India and the United States, temporally focusing on the 2000 to 2023 period. Specifically, these research materials cover sex offender registration mandates, their objectives, sex crime recidivism, and therapeutic jurisprudence. A number of researchers have also focused on juveniles whose details are available on sex offender registries. Given the relatively short existence of India's NDSO, not much secondary literature is available about that database, so this study primarily cites research conducted on the United States' sex offender framework.

The paper proceeds as follows. First, international protections of privacy are presented along with relevant European provisions and case decisions on sex offender registries. Next, the Indian legal framework is described, followed by a discussion of concerns and challenges to various aspects of that framework. This discussion then segues into a description of the US legal framework on sex offender registration and a presentation of the concerns about and challenges of the US framework. The paper ends with general conclusions and recommendations for sex offender registration in India going forward.

### RELEVANT INTERNATIONAL AND EUROPEAN PRIVACY PROTECTIONS

Before foraying into the specific Indian and US legal frameworks at issue in this article, it is useful to note relevant privacy protections articulated in international and EU instruments. Although not binding on either India or the United States, these outside resources provide guidance on generally accepted parameters for privacy protection and how those parameters might apply to sex offender registration requirements in both countries under discussion.

The 1948 Universal Declaration of Human Rights (UDHR) sets forth the fundamental rights that should be universally protected. Specifically, article 12 of the UDHR states that “[e]veryone has the right to the protection of the law against arbitrary interference with his privacy, family, home or correspondence.”<sup>5</sup>

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Council of Europe's cornerstone document, also calls for the protection of fundamental rights. Specifically, article 8 of the ECHR protects “the right to respect for his private and family life, his home, and his correspondence.” Government agencies can only interfere if allowed by law and used for the public good. The European Court of Human Rights (ECtHR) has heard several specific challenges to sex offender registration requirements on right-to-privacy grounds.<sup>6</sup> In those cases, the ECtHR ruled that there was no violation of ECHR article 8 because there must be a balance between competing public and private interests. The Court opined that the temporal length of the data conservation (in this instance, thirty years maximum) was not disproportionate to the aim of the retention of the information.<sup>7</sup> Synthesizing the UDHR and the ECHR, the Court decided that the system of inclusion in the national judicial database of sex offenders, as applied to the applicants, had struck a fair balance between the competing private and public interests at stake and held unanimously that there had been no violation of article 8.

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<sup>4</sup> See US Dept. of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, “Global Overview of Sex Offender Registration and Notification Systems” (April 2014), <https://www.icmec.org/wp-content/uploads/2015/10/US-Global-Overview-of-Sex-Offender-Systems.pdf>; see also US Dept. of Justice, Dru Sjodin National Sex Offender Public Website, accessed February 27, 2024, <https://www.nsopw.gov/>.

<sup>5</sup> Universal Declaration of Human Rights (December 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>6</sup> *B.B. v. France*, no. 5335/06; *Gardel v. France*, no. 16428/05; and *M.B. v. France*, no. 22115/06 (December 17, 2009); all available in French in the HUDOC database, <https://www.echr.coe.int/hudoc-database>.

<sup>7</sup> *B.B. v. France*; *Gardel v. France*; *M.B. v. France*; referenced in “Case Law of the European Court of Human Rights Concerning the Protection of Personal Data” (June 2018), 145–46, <https://rm.coe.int/t-pd-2018-15-case-law-on-data-protection-may2018-en/16808b2d36>.

## LEGAL FRAMEWORKS

### Legal Framework of Sex Offender Registration in India

The 2018 Criminal Law Act created the National Database on Sexual Offenders (NDSO), which only law enforcement agencies are authorized to access. The database contains records of habitual sex offenders and offenders punished under charges of rape, gang rape, the 2012 Protection of Children from Sexual Offences (POCSO) Act, or section 354A of the Indian Penal Code. The portal can be searched by the offender's name, jail location, and FIR,<sup>8</sup> and the database includes names, photographs, residential addresses, fingerprints, DNA samples, and the PAN and Aadhaar numbers<sup>9</sup> of convicted sex offenders.<sup>10</sup> The database stores information for various periods based on the offender's classification: low danger, moderate danger, or habitual offender. Even information on individuals who visit convicted offenders while imprisoned can be stored. The Ministry of Home Affairs' 2021 annual report stated that the NDSO had data on more than 1,100,000 ex-offenders, allowing investigating officers to track habitual sex offenders and initiate preventive measures against sexual offenses.<sup>11</sup>

The NDSO is maintained by the National Crime Records Bureau (NCRB), which operates under the auspices of the Ministry of Home Affairs and has been functional since 1985.<sup>12</sup> Since that year, the NCRB has been responsible for storing, coordinating, and disseminating information on criminals to law enforcement agencies. The NCRB is not a statutory body, and the first law where the NCRB is even mentioned is in section 4 of the 2022 Criminal Procedure (Identification) Act (CPIA).<sup>13</sup> The CPIA authorizes the NCRB, as well as police and prison departments, to collect, analyze, and store the biometric and personal data of any person who has been arrested, whether undertrials or convicts. The data that the NCRB collects must be retained in digital or electronic form for a period of seventy-five years from the date of collection. The Indian central government has also affirmed that juvenile perpetrators must be included in the NDSO, even though other laws contradict this mandate.

There is also the 2023 Digital Data Protection Act, wherein under section 7, the law clearly allows personal data to be processed for any lawful purpose. The law defines the legitimate uses under various categories, and the grounds mentioned under sub-clause "(d) fulfilling a legal obligation to disclose information to the state; and sub-clause (e) compliance with judgments, decrees, or orders," allow the NCRB to retain its data ownership in the same manner as prescribed under the CPIA.

### Discussion: The NDSO and CPIA—Concerns and Challenges

Both the NDSO and CPIA raise constitutional and privacy concerns for the accused and convicted sex offender. In terms of the constitution, the inclusion of the accused and convicted sex offenders' details in the

<sup>8</sup> In the Indian criminal justice system, the FIR (First Information Report) is the first step in reporting a crime by a victim or any informant who has suffered, seen, or heard about the commission of any prospective offense after which the police may start their investigation based upon the information supplied in the FIR.

<sup>9</sup> A Permanent Account Number (PAN) is a ten-digit alphanumeric number, issued in the form of a laminated card, by the Income Tax Department, to any "person" who applies for it or to whom the department allots the number without an application. It is used as proof of income from any source or transaction as well as proof of identity. An Aadhaar is a twelve-digit individual identification number issued by the Unique Identification Authority of India on behalf of the Government of India. The number serves as proof of identity and address, anywhere in India.

<sup>10</sup> National Crime Records Bureau and Ministry of Home Affairs, "Compendium of CCTNS/ICJS-Good Practices & Success Stories" (December 2020), <https://police.py.gov.in/NCRB%20-%20Compendium%20of%20CCTNS%20-%20ICJS%20with%20good%20practices%20-%202023.pdf>.

<sup>11</sup> Ministry of Home Affairs, *Annual Report 2021–22*, 206, [https://www.mha.gov.in/sites/default/files/AnnualReport2021\\_22\\_24112022%5B1%5D.pdf](https://www.mha.gov.in/sites/default/files/AnnualReport2021_22_24112022%5B1%5D.pdf).

<sup>12</sup> Established pursuant to a resolution published in the *Gazette of India*, dated March 10, 1985.

<sup>13</sup> Collection, storing, preservation of measurements and storing, sharing, dissemination, destruction, and disposal of records. The act empowers the National Crime Records Bureau (NCRB) to collect (from state governments, union territory (UT) administrations, or other law enforcement agencies), store, process, share, disseminate, and destroy records of measurements as may be prescribed by the rules. The Criminal Procedure (Identification) Rules, 2022, specify these details. The Ministry of Home Affairs notified these rules on September 19, 2022, which are available at <https://prsindia.org/billtrack/criminal-procedure-identification-rules-2022>.

NDSO potentially violates the basic liberties enshrined in the Constitution of India. Specifically, under articles 14 and 19, and most importantly under article 21, after the conviction period is over, every individual possesses the same set of fundamental rights.

In terms of privacy rights, under the Indian Supreme Court's 2017 *Puttaswamy* decision, privacy is a fundamental right.<sup>14</sup> Although there has not been much debate in India over the privacy rights of sex offenders, both the NDSO and the CPIA raise privacy violation concerns not only for convicted persons but also for undertrials, who in the Indian legal system are presumed innocent until proven guilty.

Several sections of the CPIA have been challenged in the Delhi High Court through Public Interest Litigation (PIL).<sup>15</sup> In a 2022 case, the petitioner posited that the “forceful measurement undertaken by police authorities amounts to [the] violation of [a] privacy right without prima facie establishing their involvement or the evidentiary value of such ‘measurements.’”<sup>16</sup> Further, the petitioner asserted that sections 3 and 5 of the CPIA allow “excessive, coercive and arbitrary intrusion into the dignity of a convict as well as of an individual who may be called in for simple questioning, or who is involved in the pettiest of offences.”<sup>17</sup>

Along with constitutional and privacy concerns, there is seemingly little evidence, thus far, that the NDSO has contributed to preventing the recidivism of sex offenders. In general, sex offender registries are created based on the assumption of sex offender recidivism, but sex recidivism is not common in India. According to the NCRB, arrested recidivists were only 6.4% in 2016 and 6% in 2021.<sup>18</sup> Further, the NCRB reported that 371,503 cases were registered under the category of crimes against women in 2020, and in 2021, 428,278 cases were registered—an increase of 15.28%—even while the NDSO was active.<sup>19</sup> Additionally, in the majority of cases, the perpetrator was an acquaintance of the victim. According to the NCRB, this was the case in 31,320 of the reported sex crimes in 2018; 30,080 in 2019; and 26,808 in 2020.<sup>20</sup> At this point in time, it is difficult to definitively conclude whether the NDSO has been successful in the prevention of repeat sex offenses, but the NCRB statistics so far don't affirm this.

### Legal Framework in the United States

In 1996, Congress enacted Megan's Law,<sup>21</sup> named for Megan Kanka, a girl who was brutally raped by a repeat offender. Under this law, the Federal Bureau of Investigation (FBI) began to maintain records of and track all sex offenders, including those who committed these crimes against minors, those who committed sexually violent acts, and those who were convicted for predatory sexual acts. The purpose of the FBI's move was to track and monitor all sexual offenders present in the country and to prevent future commissions of sexual crimes.

In 2006, Congress enacted the Adam Walsh Child Protection and Safety Act “to protect children and the public at-large by establishing a comprehensive national system for the registration and notification to the public and law enforcement of convicted sex offenders.”<sup>22</sup> Title 1 of that statute is the Sex Offender Registration and

<sup>14</sup> See Sushil Batra, “PIL in Delhi HC Challenges Criminal Procedure (Identification) Act, 2022,” *The Print* (April 20, 2022), <https://theprint.in/india/pil-in-delhi-hc-challengescriminal-procedure-identificationact-2022/923771/>.

<sup>15</sup> *Ibid.*

<sup>16</sup> Vivek Prasad, “PIL in Delhi HC Challenges Criminal Procedure (Identification) Act, 2022,” Saikrishna & Associates, accessed April 25, 2024, <https://www.saikrishnaassociates.com/pll-in-delhi-hc-challenges-criminal-procedure-identification-act-2022/#:~:text=The%20PIL%20is%20said%20to,hearing%20on%2015th%20November%202022>.

<sup>17</sup> Batra, “PIL in Delhi.”

<sup>18</sup> For 2016, see Nada Nooreyezda, “The Many Things Wrong with India's First Sex Offender Registry” (September 21, 2018), <https://www.theswaddle.com/the-many-things-wrong-with-indias-first-sex-offenders-list>. For 2021, see Ministry of Foreign Affairs, National Crime Records Bureau, *Crime in India 2021*, vol. III (New Delhi, 2022), 1331, <https://ruralindiaonline.org/en/library/resource/crime-in-india-2021-volume-iii/>.

<sup>19</sup> Ministry of Foreign Affairs, National Crime Records Bureau, *Crime in India 2021*, vol. I (New Delhi, 2022), 211, <https://ruralindiaonline.org/en/library/resource/crime-in-india-2021-volume-i/>.

<sup>20</sup> Per data maintained by the Indian government, “State/UTs-wise Number of Cases in which Offender was Known to the Rape Victim, from 2018–2020,” <https://data.gov.in/resource/stateuts-wise-number-case-which-offender-were-known-rape-victim-2018-2020>.

<sup>21</sup> Megan's Law, Pub. L. No. 104–145, 110 Stat. 1345 (1996).

<sup>22</sup> Adam Walsh Child Protection and Safety Act, Pub. L. No. 109–248, 120 Stat. 587 (2006).

Notification Act (SORNA), which covers the fifty US states, the District of Columbia (D.C.), principal US territories, and Native American tribal jurisdictions. SORNA sets minimum standards for sex offender registration and notification. The Dru Sjodin National Sex Offender Public Website<sup>23</sup> links together all public US state, territorial, and tribal sex offender registries. Parents, employers, and all other concerned individuals can use the database as a search tool to identify basic information on sex offenders, including their residences. Searches can be conducted by the name of the offender, zip code, address, or by limiting the search to a specific locality. A mobile app of the database is also available for download. Here, it is important to note that the search results include the minimum standards set by SORNA but are otherwise limited to what each state wants to provide.

Individual US states have their own laws on sex offender registration at varying levels of restriction. In New Jersey, for example, the registrant must provide the following information to the chief law enforcement officer of the municipality in which they reside: name; social security number; age; race; sex; date of birth; height; weight; hair and eye colors; address of legal residence; address of any current temporary legal residence; and the date and place of employment.<sup>24</sup> The registrant must confirm their address every ninety days, notify the municipal law enforcement agency if they move, and reregister with the law enforcement agency of any new municipality.<sup>25</sup>

Many individual US states mandate that a convicted sex offender who was registered in another state, register in the new state even if that offense is not designated as such in that state. For example, in South Dakota, an individual convicted of rape is required to register, and any other individual who moves to South Dakota following a sex offense conviction other than rape must also register in South Dakota.<sup>26</sup> Whenever such differences in state registration requirements arise before courts, the court usually takes one of two approaches, either the ‘fact is considered’ or the ‘elements of conviction,’ which leads to a multitude of confusion in litigation in this area.<sup>27</sup>

Further, certain US jurisdictions require more stringent registration and timely updating for homeless and transient offenders. US courts have upheld this requirement.<sup>28</sup> For example, in *Breeden v. State*, a Texas appellate court decision, an offender who moved out of a motel room into a vehicle parked in the motel parking lot was required to report a change of address, and his failure to do so was a sufficient basis for prosecution.<sup>29</sup>

Some US states prohibit the employment of sex offenders, and in other states, there are implicit practices to avoid hiring sex offenders in order to protect children.<sup>30</sup> For example, section 15-20A-13 of the Code of Alabama not only restricts the employment of a sex offender but also charges the owner or operator of a childcare facility who violates this law with a Class C felony.<sup>31</sup>

Under SORNA, any juvenile who was fourteen years of age or older at the time of the offense and was adjudicated delinquent of an offense equivalent to or more severe than aggravated sexual abuse, is required to register in their jurisdiction, including US states.<sup>32</sup> Juveniles are considered Tier III offenders under SORNA.<sup>33</sup>

Across the United States, thirty-one states require registration based on offenses enumerated in statutes, and two states require registration exclusively for juveniles convicted of rape.<sup>34</sup> However, lifetime registration of

<sup>23</sup> The term “National Sex Offender Registry” means the National Sex Offender Registry established by § 119 of the Adam Walsh Child Protection and Safety Act of 2006.

<sup>24</sup> N.J.S.A. 2C:7-4b(1).

<sup>25</sup> N.J.S.A. 2C:7-2d to e.

<sup>26</sup> S.D. Codified Laws § 22-24B-2.

<sup>27</sup> See *United States v. KT Burgee*, 988 F.3d 1054, 1060 (8th Cir. 2021); *United States v. Price*, 777 F.3d 700, 708 (4th Cir. 2015).

<sup>28</sup> *Lamberty v. State*, 108 A.3d 1225 (Table), 2015 WL 428581 (Del. 2015) (registration requirement every thirty days); *State v. Enquist*, 256 P.3d 1277, 1281 (Wash. Ct. App. 2011) (registration requirement every seven days).

<sup>29</sup> *Breeden v. State*, No. 05-06-00862-CR, 2008 WL 787934 (Tex. Ct. App. March 26, 2008).

<sup>30</sup> Elizabeth McLean, “Misuse of the Sex Offender Registry for Hiring Has Spooky Consequences,” *GoodHire* (blog) (July 1, 2020), <https://www.goodhire.com/blog/sex-offender-registry-restrictions-in-hiring/>.

<sup>31</sup> Ala. Code § 15-20A-13; see also Virginia Criminal Sentencing Commission, “Assessing Risk Among Sex Offenders in Virginia” (January 15, 2001), [http://www.vcsc.state.va.us/sex\\_off\\_report.pdf](http://www.vcsc.state.va.us/sex_off_report.pdf).

<sup>32</sup> 18 U.S.C. § 2241.

<sup>33</sup> Tier III is for serious felony sex crimes; see <https://smart.ojp.gov/sorna/current-law/implementation-documents/sorna-implementation-documents.pdf> and <https://smart.ojp.gov/sorna/current-law/implementation-documents/sorna-implementation-documents.pdf>.

<sup>34</sup> Oklahoma and South Dakota are US states that require registration exclusively for rape; see Okl. St. Ann. tit. 10A, § 2-8-102, and S.D. Codified Laws § 22-24B-2.

juveniles is not required, and discretion is granted to jurisdictions.<sup>35</sup> For example, in 2021, Colorado passed a law that requires any juvenile sex offender who moves to the state to register for inclusion on Colorado's sex offender registry, but if the juvenile's duty to register in another state is terminated by a court order, then the juvenile is not required to register or petition the court for removal from the Colorado registry.<sup>36</sup> As of now, thirty US states permit the removal of juveniles' names from registries, although the removal of names is very rare.<sup>37</sup> Names of juveniles can only be removed if the offenders meet specific criteria of tenure completion or otherwise submit a petition in this regard. Automatic name removal is allowed in only four states.<sup>38</sup>

Under the federal 2016 International Megan's Law, registered sex offenders are required to provide advance notice of any intended international travel.<sup>39</sup> As the sexual exploitation of children is a global problem that requires a comprehensive approach and extremely stringent laws, the offender who is registered under SORNA must provide twenty-four hours' advance notice to the Angel Watch Center. The Angel Watch Center was formally established in 2016 and will transmit notice to the destination country regarding the offender's international travel, if required.

## Discussion: Sex Offender Registration in the United States—Concerns and Challenges

*1. Social Stigmatization and Branding of Sex Offenders:* The social stigmatization of sex offenders flows from the offender's registration on a sex offender website.<sup>40</sup> One US research study provides empirical data on the life experiences of sex offenders while they were in prison and after they were released.<sup>41</sup> According to this study, sex offenders clearly have concerns about their neighbors' perceptions of them after they are released. A 2007 Human Rights Watch report describes the case of Mr. X, who moved to a new community but his neighbors repeatedly plastered copies of Mr. X's sex registry printout along his running route and at his son's bus stop. As a result, the family members' lives became difficult, and the family subsequently moved to a different community where they faced the same hostilities.<sup>42</sup> SORNA's provisions thus make it challenging for offenders who want to move away from their own jurisdiction and start a new life.<sup>43</sup>

In most US jurisdictions, landlords conduct a criminal background check of their prospective tenants, and being on a sex offender registry makes it difficult if not impossible for a sex offender to find a place to live.<sup>44</sup> In *E.B. v. Verniero*, the Third Circuit appellate court explained:

The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been

<sup>35</sup> *State v. Graham*, 897 N.W.2d 476, 477–78 (Iowa 2017). The Iowa Supreme Court held that the lifetime registration of juveniles does not constitute cruel and unusual punishment in violation of either the state or federal constitution. In *State v. Blankenship*, 48 N.E.3d 516, 525 (Ohio 2013), the Ohio Supreme Court held that requiring a twenty-one-year-old offender, who was convicted of unlawful sexual contact with a minor, where the victim was fifteen, to register as a Tier II offender does not constitute cruel and unusual punishment in violation of the Ohio Constitution or the Eighth Amendment to the US Constitution while also stating that “the enhanced sex-offender reporting and notification requirements [...] are punitive in nature, and violate the Eighth Amendment when applied to certain juveniles.”

<sup>36</sup> Col. Rev. Statutes 16-22-102 *et seq.* For a summary of the act, see <https://leg.colorado.gov/bills/hb21-1064>.

<sup>37</sup> <https://stateline.org/2015/11/19/states-slowly-scale-back-juvenile-sex-offender-registries/>.

<sup>38</sup> Iowa Code § 232.150(b); N.H. Rev. Stat. Ann. § 169-B:35; N.D. Cent. Code §§ 25-03.3-04, 27-20- 54(1); Ohio Rev. Code Ann. § 2151.358.

<sup>39</sup> 34 U.S.C. § 21504.

<sup>40</sup> Douglas Evans, Adam Trahan, and Kaleigh Laird, “Shame and Blame: Secondary Stigma among Families of Convicted Sex Offenders,” *Criminology & Criminal Justice* 23, no. 1 (2023): 78–97, <https://doi.org/10.1177/17488958211017391>; see also, Diana Rickard, *Sex Offenders, Stigma, and Social Control* (New Brunswick, NJ: Rutgers University Press, 2016).

<sup>41</sup> Richard Tewksbury and Kristen M. Zgoba, “Perceptions and Coping with Punishment: How Registered Sex Offenders Respond to Stress, Internet Restrictions, and the Collateral Consequences of Registration,” *International Journal of Offender Therapy and Comparative Criminology* 54, no. 4 (2010): 537–51.

<sup>42</sup> Human Rights Watch, “No Easy Answers: Sex Offender Laws in the US” 19, no. 4(G) (September 2007): 94, <https://www.hrw.org/reports/2007/us0907/us0907webwcover.pdf>.

<sup>43</sup> See *In re Doe v. O'Donnell*, 86 A.D.3d 238, 243 (N.Y. App. Div. 2011), where the court held that a registrant needed to register in New York and also when he relocated from New York to Virginia.

<sup>44</sup> “Can a Landlord Do a Criminal Background Check?” *Select Leasing & Management* (blog) (June 7, 2022), <https://www.selectleasingstl.com/can-a-landlord-do-a-criminal-background-check>.

jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats and, while such incidents of “vigilante justice” are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them.<sup>45</sup>

Social stigmatization results in labeling the sex offender for a lifetime and affects their social status. In the United States, sex offenders will be labeled or branded as such in all jurisdictions where they reside. Labels often create negative social reactions, which in turn leads to the notion that the deviant subject is an outsider.<sup>46</sup> This is antitherapeutic and undesirable. These individuals also exhibit such undesirable symptoms as unresponsiveness to treatment, a high rate of suicide attempts, and recidivism in some instances.<sup>47</sup>

Such provisions in US states also spur unintended side effects, where sex offenders are victimized and fail to reintegrate into society. For example, the above-mentioned Human Rights Watch report indicated that about one-third to one-half of sexual offenders in Florida suffered severe consequences, such as the loss of a job, relationship dissolutions, and compulsive expulsion from home.<sup>48</sup>

US employers are often reluctant to hire sex offenders even if the offense has no direct bearing on the nature of a specific job. In *Doe v. Settle*, the Fourth Circuit Court of Appeals observed that “there is no right to employment in a particular profession, and the restrictions on employment provided by Virginia’s registry laws, which prohibit teaching children, operating a day care, working for a rideshare, and operating a tow truck, are reasonable.”<sup>49</sup>

At the US Supreme Court, in *Smith v. Doe*, Justice Clarence Thomas summed up his own take on the invasive and damaging nature of sex offender registration and community notification:

Widespread dissemination of [the] offenders’ names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community. While the [majority] accepts the State’s explanation that the Act simply makes public information available in a new way, the scheme does much more. Its point, after all, is to send a message that probably would not otherwise be heard, by selecting some conviction information out of its corpus of penal records and broadcasting it with a warning. Selection makes a statement, one that affects common reputation and sometimes carries harsher consequences, such as exclusion from jobs or housing, harassment, and physical harm.<sup>50</sup>

*2. Issues with Juvenile Sex Offender Registration:* SORNA was passed to prevent children from becoming victims, but various research studies show that juveniles who are adjudicated as delinquents and are on sex offender registries can be adversely affected for life.<sup>51</sup> The Adam Walsh Act mandates registration for juveniles as young as fourteen even though at least one study has indicated that children are very docile regarding rehabilitation and that the consequences of registration are likely to undermine any rehabilitative approach available for children. According to the National Center on the Sexual Behaviour of Youth, mental health professionals do not deem juvenile sex offenders as dangerous, but being on a sex registry not only hinders their psychological development but also keeps them away from rehabilitative measures, leaving no opportunity for therapeutic jurisprudence.<sup>52</sup> Therapeutic

<sup>45</sup> *E.B. v. Verniero*, 119 F.3d 1077, 1102 (3d Cir. 1997).

<sup>46</sup> N. J. Davis, “Labelling Theory in Deviance Research: A Critique and Reconsideration,” *Sociological Quarterly* 13, no. 4 (1972): 447–74.

<sup>47</sup> Reuben Jonathan Miller, “Devolving the Carceral State: Race, Prisoner Reentry, and the Micro-Politics of Urban Poverty Management,” *Punishment & Society* 16, no. 3 (2014): 305–35, <https://doi.org/10.1177/1462474514527487>.

<sup>48</sup> Human Rights Watch, “No Easy Answers,” 79.

<sup>49</sup> *Doe v. Settle*, 24 F.4th 932 (4th Cir. 2022).

<sup>50</sup> *Smith v. Doe*, 538 U.S. 84, 109 (2003) (Thomas, J., concurring).

<sup>51</sup> Justice Policy Institute, “Registering Harm: How Sex Offense Registries Fail Youth Communities” (November 28, 2008), <https://justicepolicy.org/research/registering-harm-how-sex-offense-registries-fail-youth-communities/>.

<sup>52</sup> J. A. Hunter, D. W. Goodwin, and J. V. Becker, “The Relationship between Phallometrically Measured Deviant Sexual Arousal and Clinical Characteristics in Juvenile Sexual Offenders,” *Behavioral Research and Therapy* 32 (1994): 533–38; J. V. Becker et al., “Factors Associated with Erection in Adolescent Sex Offenders,” *Journal of Psychopathology & Behavioral Assessment* 11 (1989): 353–63; American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed. (Washington, DC: American Psychiatric Association, 1994).

jurisprudence aims to promote the enactment of laws that consider the psychological well-being of individuals and avoid processes that are antitherapeutic.<sup>53</sup> In other words, therapeutic jurisprudence aims to minimize punitive consequences so that harsh results won't occur.<sup>54</sup>

According to a 2020 Juvenile Law Center Report, "Labeled for Life: A Review of Youth Sex Offender Registration Laws," 97% of juvenile delinquents who are also registered under SORNA do not re-offend.<sup>55</sup> The report also indicates that sexual recidivism has declined by 73% in the United States over approximately thirty years.<sup>56</sup> These statistics imply that registration on public sex offender websites do not necessarily serve to prevent juvenile sex offender recidivism. Moreover, according to the Juvenile Law Center, which conducted thorough research on all fifty US states for its aforementioned report, placing juveniles on a sex offender registry only causes harm, as sexual recidivism is very low among that group.<sup>57</sup> The report's authors also suggest that a 'one size fits all' approach is not suitable for juvenile offenders.<sup>58</sup> Juveniles who are branded as delinquents on a sex offender registry may find it extremely difficult to resonate with their peer groups and often tend towards illegal behavior.<sup>59</sup> Placing their photographs on a registry will only further prevent their mainstreaming post-conviction. Further, the International Association for the Treatment of Sexual Offenders (IATSO) has explicitly stated that SORNA shouldn't be applied to juveniles.<sup>60</sup>

3. *Overall Challenges with Sex Offender Registries in the United States:* An offender's registration on a website provides communities with a false sense of protection and also fails to provide measures to protect victims' families from sex offenses.

1. There are studies showing that information provided on a registry is inaccurate, and it is difficult to track offenders promptly.<sup>61</sup>
2. Establishing and maintaining such a registry requires time, money, and resources. Considering that SORNA's success rate is already contentious, the amount of money invested is overlooked.<sup>62</sup> According to the Justice Policy Institute,<sup>63</sup> there are certain incidental costs to SORNA:
  - Additional personnel and training expenditures;
  - Software costs (i.e., licensing fees, installation, maintenance, administration, and technician costs);
  - Additional prison space and facilities;
  - Increased administrative and court fee expenditures; and
  - Legislative costs, including the cost of policy implementation.
3. Registration requires basic information like name, age, sex, residency, institutional information, place of work, and photographs, which brand them easily as an offender among their acquaintances.

<sup>53</sup> See Heather Cucolo and Michael L. Perlin, "Preventing Sex-Offender Recidivism through Therapeutic Jurisprudence Approaches and Specialized Community Integration," *Temple Political & Civil Rights Law Review* 1 (2012): 1–42, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2116424](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2116424).

<sup>54</sup> M. S. King, "Restorative Justice, Therapeutic Jurisprudence, and the Rise of Emotionally Intelligent Justice," *Melbourne University Law Review* 32 (2008): 1096–126.

<sup>55</sup> M. F. Caldwell, "Quantifying the Decline in Juvenile Sexual Recidivism Rates," *Psychology, Public Policy, and Law* 22, no. 4 (2016): 414–26, <https://doi.org/10.1037/law0000094>.

<sup>56</sup> Malik Pickett et al., "Labeled for Life: A Review of Sex Offender Legislation Laws," Juvenile Law Center (August 13, 2020), <https://jlc.org/sites/default/files/attachments/2020-09/Labeled%20for%20Life%202020.pdf>.

<sup>57</sup> Pickett et al., "Labeled for Life."

<sup>58</sup> Ibid.

<sup>59</sup> Franklin E. Zimring et al., "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?" *Criminology & Public Policy* 6, no. 3 (2007): 507–34.

<sup>60</sup> Michael Miner et al., "Standards of Care for Juvenile Sexual Offenders of the International Association for the Treatment of Sexual Offenders," *Sexual Offender Treatment* 1, no. 3 (2006): 1–7.

<sup>61</sup> Cheryl W. Thompson, "Sex Offender Registries Often Fail Those They Are Designed to Protect," NPR (August 25, 2020), <https://www.npr.org/2020/08/25/808229392/sex-offender-registries-often-fail-those-they-are-designed-to-protect>.

<sup>62</sup> Lauren Cui et al., "The Benefits and Detriments of Sex Offender Registries, A Comprehensive Qualitative Analysis, 2018," HAQ: Centre for Child's Rights, <http://haqrc.org/wp-content/uploads/2018/09/sex-offenders-registry-a-study-by-haq-macquire-university-2018.pdf>.

<sup>63</sup> Justice Policy Institute, "What Will It Cost States to Comply with the Sex Offender Registration and Notification Act? (2008)," [https://www.njcn.org/uploads/digital-library/resource\\_840.pdf](https://www.njcn.org/uploads/digital-library/resource_840.pdf).



4. Registration acts retroactively,<sup>64</sup> which means a person who was convicted before the passage of the Adam Walsh Act is subject to SORNA's registration requirements if
  - (a) they are currently registering,
  - (b) they are under supervision or incarcerated, or
  - (c) if the offender re-enters the system because of a new conviction whether or not the new crime is a sex offense.

## GENERAL CONCLUSIONS

Current sex offender registration laws in India and the United States were created in response to horrific incidents. The sexual crimes committed against Nirbhaya in India and Megan Kanka in the United States increased the demand for stricter legislation and immediate solutions in the form of sex offender registries. These registries were established under the assumption that they would reduce sex offenders' recidivism, although that assumption has not been definitively proven in either country.

Criminology literature has yet to present accurate policy formulations regarding sex offense recidivism in either India or the United States, and both governments have failed to sufficiently analyze recidivism, clearly articulate the universal classes of sex offenders that must register, and adequately address the matter of the registration of juvenile sex offenders. Both governments have also seemingly ignored the importance and approach of therapeutic jurisprudence. In the United States, lifetime registrations, employment restrictions, labeling and branding, and community notifications are perhaps more demonizing in nature when compared to the Indian legal framework, which is likely due to the public-access aspect of the US national registry.

It is indeed true that information about sex offenders is crucial for criminal justice systems, but at the same time, it is also vital to safeguard the human rights of sexual offenders—rights that are specified in a general sense in the UDHR and the ECHR. It can be argued that monitoring sex offenders' actions and whereabouts is useful, but at some point in time, it is extremely difficult for a sex offender to survive in a system where they have been branded for life as a sex offender. This approach is antitherapeutic. In ancient times, a thief was branded as a thief by marking their forehead, but in modern times we have a different system where 'branding' occurs digitally. India needs to revisit and review its policies because, in the context of criminal law, sex offenders' basic human rights cannot be ignored vis-à-vis clearly articulated international and even European privacy concerns.

## RECOMMENDATIONS FOR INDIA

Undoubtedly, India needs to deter the commitment of sex crimes, but it also needs to restrict any collateral damage to sex offenders resulting from registration in the NDSO. One main concern in the context of the NDSO relates to the NCRB's collection and maintenance of data that is supposed to be accessed only by law enforcement agencies. India needs to immediately address the vacuum created by the absence of a legal framework and penalty provisions for any wilful leak of NDSO information. Notwithstanding general privacy concerns, a leak of this information can endanger the offender's life because of the threat of mob lynching.<sup>65</sup> Thus far, India has considered political and social conditions and refrained from placing sex offender information in the public domain, a protocol that it should continue to follow to avoid 'name and shame' campaigns.<sup>66</sup>

<sup>64</sup> Supplemental Guidelines for Sex Offender Registration and Notification, 76 *Fed. Reg.*, 1630, 1639 (January 11, 2011), [www.govinfo.gov/content/pkg/FR-2011-01-11/pdf/2011-505.pdf](http://www.govinfo.gov/content/pkg/FR-2011-01-11/pdf/2011-505.pdf); see also *United States v. W.B.H.*, 664 F.3d 848, 852 (11th Cir. 2011).

<sup>65</sup> Beginning in 2017, the NCRB removed its data on hate crime, considering it unreliable. Thus, official figures cannot be provided. However, the *Shillong Times* reported the mob lynching of two individuals because they were suspected of child abduction. Likewise, Tamil Nadu, a woman, was lynched for distributing chocolate to children, as she was suspected of being a child abductor (stories reported in *The Wire*).

<sup>66</sup> Earlier in 2000, *The Guardian* gained access to sex offenders' details and shared them with the public. This increased the momentum for a 'name and shame campaign.' See "News of the World Suspends Name-and-Shame Campaign" (August 4, 2000), <https://www.theguardian.com/society/2000/aug/04/childprotection>.

The true solution in India lies in improving investigative processes, avoiding undue delays, and emphasizing a reformatory approach. Strategies and policy formulation must take place based on best practices followed in other jurisdictions while simultaneously focusing on balancing the interests of individuals with those of society as articulated in the above-mentioned ECtHR jurisprudence.

Community protection models in India must differ from those in the United States because despite providing public access to sex offender registries there, this action has not necessarily yielded positive results. India emphasizes that punishment must be imposed but that punishment must conform with societal values. India has a 'right to safety' instead of a 'right to know' approach (i.e., who the offender is). Law enforcement agencies must safeguard the public from criminals rather than provide a criminal's details to the public, including their post-release whereabouts. India must analyze the NDSO's maintenance and its impact on the conviction rate, especially in rape cases, perhaps accepting that sex offenses, in general, cannot necessarily be curbed by simply maintaining a national database.

Thus, in sum, India needs to take the following steps to ensure the safety of its citizens and maintain sex offender registries as preventive tools:

- a. Improve sex education for the public and increase its diffusion, which may result in a decline in the commission of sex crimes.
- b. Conduct thorough research on sex recidivism in India and accurately assess the danger posed by convicted sex offenders. The NCRB, along with the Ministry of Home Affairs, should conduct these studies.
- c. Maintain secured access to the NDSO with no public access.
- d. Keep a check on registered sex offenders and ensure they are not posing any danger to victims or their families. Law enforcement agencies can perform these activities.
- e. Be cognizant of labeling, branding, and reformatory options while analyzing the CPIA.
- f. Create a training program for officers who maintain the NDSO. It is vital that these officers understand sex offenders' registration requirements and the responsibilities of collaborating agencies that deal with these records: it must be made clear which data are to be shared with whom and when. Any lapses in this regard will impede the agencies' ability to track offenders, and the lives of sex offenders may also be jeopardized.
- g. Create a penal provision for those who mishandle any NDSO data wilfully.
- h. Continue to be cognizant of political, social, and economic conditions in the context of access to sex offender information.
- i. Create separate and stricter punishments for acquaintance rape or incest.