



HUMAN RIGHTS VIOLATION FROM SEX OFFENDER REGISTRY

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Following the gruesome 2012 ‘Nirbhaya’ gang-rape case which became the talk of the country for quite some time, there was an increasing demand from all sections of the society to make the punishment for sexual abuse harsher to deter such an incident from happening again. One of the culprits of this incident was a juvenile of 17 years of age who was alleged to be the most violent amongst all the perpetrators. There was wide outrage from the public to punish all the culprits along with the juvenile with death penalty. But since the juvenile could not be punished for more than three years as per the Juvenile Justice (Care and Protection of Children) Act, 2000,¹ the 17 year old boy was released after completing his 3 years of custody at a special juvenile home. However this was met by a public resentment over the release as they wanted the maximum punishment for even the juvenile who had committed such a heinous crime. In light of the growing public resentment the government passed the Juvenile Justice (Care and Protection of Children) Act, 2015² which included a provision through which a juvenile (between the age of 16 to 18) could be tried as an adult if the crime committed by the juvenile is of a ‘heinous’ nature which includes drugs,

waging war, trafficking, abetment of crimes, allowing one’s premises to be used, and many others.

Following this the Minister for Women and Child Development Maneka Gandhi demanded for the formation of a National Sex Offender Registry system along the lines of those which exists in the U.S. under which the government authorities would be allowed to keep track of all those who have been convicted of committing sexual offences even after completing their criminal punishments. As in U.S. the Government seeks to release the data of the sexual offenders in the public so as to make the public aware of the previously convicted sexual offenders around them. This data includes name and aliases – registration of primary or given name, nicknames, pseudonyms, Interact identifiers and addresses, telephone numbers, addresses including temporary lodging information, travel and immigration documents, employment information, professional licenses, school/ college/institute information, vehicle information, date of birth, criminal history, current photograph, fingerprints and palm prints, DNA sample, driver’s license, identification card, PAN card number, AADHAR card number and voter ID No.³

But there are many flaws with having this kind of sexual offender registry list amongst them one being that it not only seeks to put adult sex offenders under the list but also juveniles between the age of 16 to 18 years of

¹ Juvenile Justice (Care and Protection of Children) Act, 2000

² Juvenile Justice (Care and Protection of Children) Act, 2015

³ National sex offender list, Press Information Bureau, Government of India

<http://pib.nic.in/newsite/mbErel.aspx?relid=145173>



age charged of sexual assault as provided under Juvenile Justice (Care and Protection of Children) Act, 2015 who would now also be included under this type of registry which as discussed further is not only based on flawed empirical evidences but also goes against the basic human rights of privacy and dignity of all those put under such list while also going against the reformative notion that the Juvenile Justice Act seeks to provide. It is also stated that this type of sexual offender registry is a form of harsh punishment under to which people are unjustly being subjected to.

One may ask a very simple but a very important question- How does Sexual offender registry in violation of a human right? First of all a registry of this kind allows the government to put in public information regarding the sex offender including travel and information documents, employment information, professional licenses etc. in the curtail of making people feel secure in their home which is in direct conflict with the right of the previously convicted sexual offenders right to privacy and right to dignity which is done in order to make an average person in the society feel safer while in reality this publicizing of information regarding the sexual offender is a form of harsh punishment that traumatises previously convicted sexual offenders. Post the Nirbhaya case there was a demand from

the society to publicly name and shame those who are held guilty of committing sexual offences so that they are prevented from committing the crime in the future. In supporting this argument many cites the U.S. Department of Justice's findings which put the recidivism rates as being as high as 80% among sex offenders, but many further studies and findings have found the finding to be flawed as it was based on an experiment whose aim was not to find the recidivism rates. In India the National Crime Records Bureau ⁴found the recidivism rates to be around 5.4% for juveniles and around 7.4 per cent to 18.9% among all sex offenders which in itself is enough to disprove the finding of the high recidivism rates.

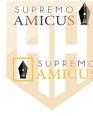
This sexual offence registry treats those who have been convicted of sexual offences as being those who can never be reformed as their punishment lasts for a much longer period than that provided by the courts in terms of jail sentences, which is the stigmatization and traumatization faced post completion of their jail sentences. In the U.S. where the system currently exists there is a severe limitation as to the places where a previously convicted sex offender can stay, most of the states ban sex offenders from living within 1,000 feet of areas populated by children, such as schools, parks, bus stops, and day care centres⁶ also since their data is available in the public domain they face

⁴ Crime in India 2014 Compendium
<http://ncrb.nic.in/StatPublications/CII/CII2014/Compendium%202014.pdf>

⁵ Aisha K. Gill, Karen Harrison, *Sentencing Sex Offenders in India: Retributive Justice versus Sex-Offender Treatment Programmes and Restorative Justice Approaches*,

<http://www.sascv.org/ijcjs/pdfs/gillharrisonijcjs2013vol8issue2.pdf>

⁶ Carla Schultz, *The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry*,
<http://scholarworks.sjsu.edu/cgi/viewcontent.cgi?article=1014&context=themis>



severe stigmatization and ostracization in places where they can stay in. Finding a living space under these restrictions is much more difficult than it sounds. In Florida, 95% of residences are within 1,000 feet of a park, school, bus stop, or day care. When the range was expanded to 2,500 feet, registered sex offenders were found to be ineligible for 99.7% of residences⁷.

This also results in them having great difficulty in finding employment which makes it even more difficult for them to re-enter the society, in a survey of registered sex offenders, 27% reported losing their jobs because of the registry. Because of their status, they are also ineligible for welfare services and public housing⁸. All this goes hand in hand with the psychological impact it has on those who have been previously convicted and put under the registry which is a complete violation of their human rights in order to create a false impression of safety. Levenson, D'Amora, and Hern (2007)⁹ studied how Megan's Law (the law that puts restriction on previously convicted sexual offenders) psychologically affects sex offenders. Over 200 offenders attending treatment programs were surveyed and half of them 62% of whom agreed that Megan's Law caused them stress and made it more difficult to recover. Over half of the offenders reported feeling lonely and isolated from society. Half of those surveyed claimed they lost friendships because of Megan's Law, felt

ashamed and embarrassed, had less hope for the future, and felt that no one believed they could change. Approximately half also reported fearing for their safety because of Megan's Law¹⁰. It is evident that the registry's stigma causes serious damage to registered offenders. These consequences, although unintended, threaten offenders' recovery processes and their likelihood of leading lives of desistence.

All this is evident of the same fact that sexual offender registry is in itself a harsh punishment which is meted out against those who are convicted of sexual offences. This type of system is relevant only when there is high rate of recidivism existing in the society which is the exact same view that has guided the government to draft the sex offender registry bill.

⁷ Levenson, J. & Tewksbury, R. (2009). *Collateral damage: Family members of registered sex offenders. American Journal of Criminal Justice*

⁸ Robbers, M. L. P. (2008). *Lifers on the outside: Sex offenders and disintegrative shaming. International Journal of Offender Therapy and Comparative Criminology*

⁹ Levenson, J. S., D'Amora, D. A., & Hern, A. L. (2007). *Megan's Law and its impact on community re-entry for sex offenders. Behavioral Sciences and the Law*

¹⁰ *Supra*, note ix



Another major issue with these type of registry is that it is not only meted out against 'adult' sex offenders but also against juveniles (i.e. person below 18 years of age) who should normally be excluded from such a list as the general wit says that juveniles due to their age and mental capacity are sometimes not able to control themselves, moreover they are more likely to be reformed and would therefore not commit those crimes in the future. As per the Press Information Bureau, Government of India, The initial consultation draft includes the registration of individuals convicted for offences like rape, voyeurism, stalking and aggravated sexual assault and includes possibility of registration of offenders below and above 18 years¹¹. This is being done in consonance with the Juvenile Justice (Care and Protection of Children) Act, 2015¹² which allows for a juvenile between the age of 16 to 18 years to be tried as adult if the crime committed by the juvenile is of heinous nature. The Union minister for women and child development Maneka Gandhi even alleged that 50% of all sexual crimes were committed by 16-year olds which is a gross exaggeration of the real figure as provided by NCRB shows it is no more than 2.4 percent¹³. Moreover the ideology behind including juveniles under sexual offender registry would still be reasonable if there was a high rate of recidivism among juvenile sexual offenders which is also not true as per the empirical evidence provided by the National Crime Records Bureau which puts the rate of recidivism among juvenile sex offenders at 5.4%.¹⁴

Thus the harsh punishment meted out against juvenile sex offenders on the assumption that

50% of sexual offences are committed by 16 years old and the high rate of recidivism amongst them is found to be empirically wrong. Yes, a light punishment handed out to the juvenile rapist in the Nirbhaya case has only fanned public anger. However, instead of bowing down to popular outcry, the government should ensure reformation and rehabilitation of young offenders. These are actions which need reformative measures. Under the erstwhile juvenile justice regime, the Government fulfilled its commitment to protect children, unconditionally. It recognized that all children in their adolescent years are prone to experimenting, predicted that some would make mistakes, and provided space for second chances, for them to be reformed and rehabilitated even if they make grave mistakes but by including juveniles under sex offender registry list as adults the government is moving away from this reformative notion.

¹¹Supra, note iii

¹²Supra, note ii



A report by Human Rights Watch ¹⁵tells the stories of 281 youth who were placed on a sex offender registry for offenses they committed when they were between eight and 18 years old, as well as hundreds of offenders' family members, attorneys, experts, and victims of child-on-child sexual assault, the report confirms what common sense dictates about registration of children they are stigmatizing and result in harmful consequences, including restrictions on residence, interruptions and exclusions from education and employment, and psychological harm sometimes ending in suicide.

Despite the evidence, the government wants to subject children to sex offender registration and community notification in a misguided attempt to protect public safety. Children are required to report to probation offices every few months, provide new photographs as they age or change appearance, and inform law enforcement every time they change motor vehicles, jobs or place of residence. Even a simple vacation can trigger an obligation to report. Failure to follow the letter of registration laws results in further criminal justice system involvement for failure to comply, which itself is a new crime which may carry a mandatory prison. Putting juveniles under the sex offender registry can do more harm than good as juveniles convicted of sexual offences would be unable to find jobs and would be forced out of most places of residences leaving making them even more prone to commit criminal activities.

In conclusion it is stated that sex offender registry due to its overall negative impact on those who are unjustly and as per the empirical data quite uselessly subjected to what can be described as nothing short of punishment which violates the basic human rights of privacy and dignity of those put under such a list while also violating their rights as guaranteed by the constitution. One may argue that since they have committed such a heinous crime they must therefore pay for it but such an argument does not take into account that these people have already completed their sentences as provided for by the court and therefore they have with themselves as many rights as an average person and the perpetual punishment which is faced by them as a result of being in the sex offender registry list is wholly unjustified and is a gross violation of their human rights.

¹³Supra, note iv

¹⁴Supra, note xiii

¹⁵ Human Rights Watch, *Raised on the Registry The Irreparable Harm of Placing Children on Sex*