

THE BENEFITS AND DETRIMENTS OF SEX OFFENDER REGISTRIES

*A COMPREHENSIVE QUALITATIVE ANALYSIS
2018*



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This report was prepared on behalf of the HAQ:Centre for Child Rights ('HAQ'), an Indian NGO based in Delhi that aims to recognise, promote and protect the rights of all children.

HAQ believes that all children should have the right to freedom from all forms of abuse, and that the State should provide a pivotal role in realising these rights. To realise this goal, HAQ conducts policy research and documentation on child welfare, and trains individuals and organisations that work closely with children. This report is purposed to fulfil these aims.

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Key Definitions

Term	Definition
CRC	Convention on the Right of the Child
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IPC	Indian Penal Code
JPI	Justice Policy Institute
N.J	New Jersey
POSCO	The Protection of Children from Sexual Offences Act 2012
SAFE	Sex Offender Apprehension and Felony Enforcement Initiative
SC	Scheduled Casts
SOR	Sexual Offender Registry
SORN	Sexual Offender Registry and Notification System
SORNA	Sexual Offender Registration and Notification Act
ST	Scheduled Tribes
US	United States
USD	United States dollar

P R E F A C E

The benefits and detriments of Sex Offender Registries (SORs) and notification systems (collectively referred to as ‘SORNs’), is heavily discussed among academic discourse globally. Such registries differ in their operation and implementation significantly across jurisdictions, and there is a large variance in accessibility and community notification for these registries. As such, it would be erroneous to conclude that SORNs are beneficial without giving due regard to the idiosyncrasies of each individual model.

Fundamentally, SORs record the names of convicted sexual offenders on a database. They are a mechanism that works by tagging offenders in the community, and making these details only known to police and law enforcement agencies. The SOR often operates side-by-side with notification systems. A notification system is a mechanism that, depending on the model, allows not only the police, but also the general public, to access a database of sex offenders and discover their location and potentially other personal characteristics. Both SORs and notification systems are tools introduced to assist police in ‘solving sex crimes and increase public safety.’¹ They assist crime enforcement agencies as well as the community to track convicted sexual offenders in communities. Additionally, among other conditions, some models also impose movement restrictions on registered offenders.

Purpose of this study

This report aims to determine whether the benefits of SORNs justify introducing such laws, or whether the associated detriments outweigh the benefits. To do so, Part 1 of this report will discuss the statistical effectiveness of SORNs, including whether they reduce recidivism from both localised and international perspectives. Then, Part 2 will address the economic, social and legal impacts of SORNs, to ultimately conclude that these impacts are largely negative. Therefore, the conclusion that must be reached is that although SORNs have limited benefits, these are outweighed by the negative impacts that they have on the lives of individuals, communities, and the state, which renders them largely ineffective. Thus, states should be particularly circumspect in introducing such laws, particularly if they lack the financial resources to do so effectively.

¹ Lisa Murphy and J P Fedoroff, ‘Sexual Offenders’ Views of Canadian Sex Offender Registries A Survey of a Clinical Sample’ (2012) 45(3) *Canadian Journal of Behavioural Science* 238, 238.

PART ONE:

BENEFITS OF SORs vs.

STATISTICAL

EFFECTIVENESS OF

SEX OFFENDER

REGISTRIES

1.1 - RECIDIVISM

In criminological discourse the term ‘recidivism’ is used in various ways to describe an individual reverting to criminal behaviour,² a prisoner returning to custody,³ or even the ‘reappearance of an offender in court.’⁴ Evidently, the definitional technicalities of recidivism vary in the literature. Nevertheless, underpinning each definition is a broad description of repeated criminal activity by an individual offender.⁵ Resulting from the inconsistency in defining key terms, statistical information regarding recidivism for sex offences is varied and contradictory. While some studies insufficiently differentiate between sex-offender registry systems and sex-offender notification systems, others define ‘recidivism’ too broadly by failing to state whether it is measured only regarding sex offences, or for non-sex offences, or both. However, even when definitions are consistent between studies, differing law enforcement policies, social demographics and trends between jurisdictions result in varied statistics. This section will seek to determine whether, after highlighting these differences, a general ‘principle’ regarding the correlation between introducing SORs and reduced recidivism rates can be found. Ultimately, the stronger the correlation between introducing SOR schemes and a reduction in recidivism for sex or non-sex related offences, the stronger the argument in favour of adopting such schemes.

² Michael Maltz, *Recidivism* (Orlando FL: Academic Press, 1984).

³ Steering Committee for the Review of Government Services, Parliament of Victoria, *Report on Government Services* (2006).

⁴ Damon Muller and Rosalind Harris, ‘Recidivism Among Victorian Juvenile Justice Clients’ (Research Paper, Department of Human Services Victoria, 2001).

⁵ Jason Payne, ‘Recidivism in Australia: Findings and Future Research’ (Research Paper No 80, Australian Institute of Criminology, 2007) 4.

Most research on SORs occurs within the United States, with all states having a form of SOR.⁶ This subsection will analyse the common false assumptions derived from statistical data primarily based on research in the US. These assumptions are as follows:

1. that sex offenders are likely to reoffend;
2. that SORs effectively reduce recidivism, and;
3. that sex offender notification systems better reduce recidivism than general registration systems.

Following an analysis of these assumptions, fundamental measurement issues relating to recidivism will be considered, before considering the applicability and accuracy of these assumptions within an international context.

1.1.1 - Assumption #1: Sex offenders are likely to reoffend

A common assumption in society is that sex offenders are likely to reoffend due to abnormal, unchangeable and often uncontrollable tendencies. They are perceived to be mentally ill, requiring psychological and/or pharmacological treatment. This belief is unsurprising as most definitions of ‘sex offending’ are conceived under a psychological, or combined psychological-medical paradigm in contemporary research literature.⁷ These assumptions are ingrained in legal discourse, with the US Supreme Court commenting that recidivism for sex offenders is ‘unreasonably high’, without giving any empirical evidence to support such claims.⁸

While reliable, empirical evidence is difficult to find due to jurisdictional and definitional differences between studies, most studies agree that recidivism is generally low for sex offences.⁹ In the United States and Canada, adult sex offender recidivism was found to range from 5.3% to 24%.¹⁰ Further, it was reported that 73% of registered sex offenders in Canada had not been charged or convicted of another sexual offence 12 years post-release.¹¹ In a smaller timeframe of 5 years post-release,

⁶ Jane Shim, *Listed for Life* (13 August 2014) Slate

<http://www.slate.com/articles/news_and_politics/jurisprudence/2014/08/sex_offender_registry_laws_by_state_mapped.html>.

⁷ Mark Alan Winton, ‘Treatment Paradigms of Sex Offenders of Children: An Analysis of Professional Journals’ (2005) 10 *Aggression and Violent Behaviour* 569-578.

⁸ Caleb Durling, ‘Never Going Home: Does it Make Us Safer? Does it Make Sense?’ (2006) 97(1) *Journal of Criminal Law and Criminology* 317-363; *Smith v Doe No. 84*, 105 (538 U.S. 2003).

⁹ Danielle Tolson and Jennifer Klein, ‘Registration, Residency Restrictions, and Community Notification: A Social Capital Perspective on the Isolation of Registered Sex Offenders in Our Communities’ (2015) 25(5) *Journal of Human Behaviour in the Social Environment* 375, 380.

¹⁰ Jill Levenson and David D’Amora, ‘Social Policies Designed to Prevent Sexual Violence: The Emperor’s New Clothes’ (2007) 18(2) *Criminal Justice Policy Review* 168–199; R. Karl Hanson and K. Morton-Bourgon, ‘The Characteristics of Persistent Sexual Offenders: A Meta-analysis of Recidivism Studies’ (2005) 73(6) *Journal of Consulting and Clinical Psychology* 1154-1163; R. Karl Hanson and M. Bussiere, ‘Predicting Relapse: A Meta-analysis of Sexual Offender Recidivism Studies’ (1998) 66(2) *Journal of Consulting and Clinical Psychology*, 348–362.

¹¹ Andrew Harris and R. Karl Hanson, ‘Sex Offender Recidivism: A Simple Question’ (2004) 3 *Public Safety and Emergency Preparedness Canada*, 1-23.

a study of 1,115 officially registered sex offenders from Austria showed that recidivism overall was 6%, with 4% for the rapist subgroup, and 8% for the child molester subgroup.¹² This can be compared to higher recidivism statistics for general crimes where, in a sample of 10,000 juvenile male offenders, 35% reoffended for non-sex related crimes.¹³ Further, in a study of 6,102 Colorado inmates released between 2008-2012 (with only a small proportion of 1.85% being sex-offenders), 61.3% reoffended without treatment, and 46.8% with treatment.¹⁴ While recidivism rates vary between such studies due to varying measurement time frames, jurisdictions, and methods, overall sex offender recidivism seems to range anywhere from 4% to 24%, which is significantly lower than for general categories of crime. This tends to indicate that very few sex offenders reoffend after being convicted.

In contrast, some research argues that low recidivism statistics for sex offences are conservative and don't reflect true estimates.¹⁵ Research in Scotland estimates that actual recidivism rates could be double that indicated by collected statistics due to low reporting and detection of crimes.¹⁶ That is, most research defines 'recidivism' as returning to prison for a sex offence after being imprisoned for the same crime previously.¹⁷ For this to occur, this requires detection, reporting, arrest, and successful prosecution, which are collectively rare.¹⁸ Nevertheless, it must be noted that some offenders *are* convicted without actually having committed sex offences, which may lower this 'true' estimate.¹⁹

Ultimately, statistics on recidivism are difficult to objectively and accurately calculate for sex offences. It is therefore also difficult, if not impossible, to determine the extent to which SORs contribute to low rates of recidivism. However, in order to justify the existence of SORs, there must be some correlation between their introduction and reduced recidivism rates for sex offences.

1.1.2 - Assumption #2: SORs reduce recidivism

Registered versus unregistered offenders

The existence of SORs is largely justified based on assumptions that sex offenders are likely to reoffend and pose a threat to public safety. SORs are therefore designed to reduce this risk by implementing restrictions on offenders' freedoms when reintegrating into society. However, research in Iowa found no statistically significant

¹² Martin Rettenberger, Peer Briken, Daniel Turner, and Reinhard Eher, 'Sexual Offender Recidivism Among a Population-Based Prison Sample' (2015) 59(4) *International Journal of Offender Therapy and Comparative Criminology* 424.

¹³ Marvin Wolfgang, Robert Figlo and Thorsten Sellin, *Delinquency in a Birth Cohort* (University of Chicago Press, 1972).

¹⁴ Ráchael Powers, Catherine Kaukinen and Michelle Jeanis, 'An Examination of Recidivism Among Inmates Released From a Private Reentry Center and Public Institutions in Colorado' (2017) 97(5) *The Prison Journal* 609-627.

¹⁵ Karen Gelb, 'Recidivism of Sex Offenders' (Research Paper, Sentencing Advisory Council, January 2007) 21.

¹⁶ Nancy Loucks, 'Recidivism Amongst Serious Violent and Sex Offenders' (Research Report, Scottish Executive Social Research Unit, 2002).

¹⁷ Above n 16.

¹⁸ Ibid.

¹⁹ Above n 17, 2.

difference between recidivism rates for sex offenders subject to registration, versus those not subject to registration.²⁰ Further, recidivism was low for both groups.²¹ The same finding was reported among juveniles, with recidivism rates being the same for registered and non-registered offenders measured over a four-year period.²² On face value, it seems that SORs have little to no impact on recidivism rates.

From these statistics, it is easy to draw conclusions based on psychological-medical paradigms of sex offenders. That is, if recidivism is just as high for registered as it is for unregistered offenders, then offenders must have uncontrollable sexual tendencies and will reoffend regardless of being registered or not.²³ However, this conclusion overlooks the fact that recidivism rates are actually low. Instead, the low impact that SORs have on recidivism may be because they register and classify individuals as ‘sex offenders’ who are first time offenders and/or have committed minor offences, and who would not re-offend even if unregistered.²⁴ In some jurisdictions, such individuals are classified as sex offenders for life, despite posing little to no threat to public safety. In fact, many US states have policies where juvenile offenders are considered as culpable as adult sex offenders and can be registered for life, despite not yet having developed mature decision-making abilities or even having intentionally committed sex crimes.²⁵ Thus, with low recidivism rates for offenders both on and off registries, it is difficult to determine whether SORs contribute to low recidivism rates or not.

Does a weak correlation between SORs and recidivism justify them being introduced?

This difficulty of establishing a correlation between SORs and low recidivism is exacerbated by the other factors at play. These include the successful rehabilitation of offenders so as to prevent reoffending, a lack of opportunity to reoffend once registered, and the low reporting and/or non-detection of sex crimes when they do occur.²⁶ Consequently, SORs cannot single-handedly cause low recidivism, nor is it possible to estimate how effective they are at reducing recidivism.²⁷

“It may be argued that inability to measure the impact of SORs on recidivism should not negate implementing SORs entirely as the community must be protected from individuals that would reoffend if not registered. However, as explored in section 2.2

²⁰ Geneva Adkins, David Huff and Paul Stageberg, ‘The Iowa Sex Offender Registry and Recidivism’ (Research Report, Iowa Department of Human Rights, December 2000).

²¹ Ibid.

²² Elizabeth Letourneau and Kevin Armstrong, ‘Recidivism Rates for Registered and Nonregistered Juvenile Sex Offenders’ (2008) 20(4) *Sexual Abuse: A Journal of Research and Treatment* 393-408.

²³ Above n 10.

²⁴ John La Fond and Bruce Winnick, ‘Sex Offender Reentry Courts: A Cost Effective Proposal for Managing Sex Offender Risk in the Community’ (2003) 989 *Annals of the New York Academy of Sciences* 300, 302.

²⁵ Erin Comartin, Poco Kernsmith and Bart Miles ‘Family Experiences of Young Adult Sex Offender Registration’ (2010) 19(2) *Journal of Child Sexual Abuse* 204, 206.

²⁶ Denise Lievore, ‘Recidivism of Sexual Assault Offenders: Rates, Risk Factors and Treatment Efficacy’ (Research Report, Australian Institute of Criminology, May 2004) 37.

²⁷ Above n 16.

of this report, the limited benefit of SORs at reducing recidivism for dangerous offenders is outweighed by widespread and unwarranted damage they cause to offenders with little to no recidivistic tendencies.”

Some scholars suggest introducing pre-screening prior to registry listing could remedy this.²⁸ That is, if registries were limited to listing people that were actually dangerous, this would not only transform SORs into an effective mechanism for crime prevention (by preventing individuals who pose little chance of recommitting crimes in the first place from skewing statistics), but also better distribute resources towards punishing those who actually deserve punishment. This would require a comprehensive psychological analysis of offenders before being placed on the registry to determine their likelihood of reoffending, which requires resources that even affluent states do not possess.

To illustrate, many American states struggle to maintain registry data even without pre-screening processes. In California, 330,000 sex offenders were lost from their database.²⁹ In Kentucky, it was found that there was enough information missing from their SOR to render it useless in promoting community safety and awareness.³⁰ Further, in an interview with 183 sex offenders in the US, more than half reported reading inaccurate information about themselves online.³¹ Therefore, if states are struggling to regulate registries in their current format, introducing pre-screening processes would arguably require more resources than such states possess.

1.1.3 - Assumption #3: Notification systems prevent recidivism better than registration systems

The above analysis is related primarily to the lack of impact sex offender registration systems have on recidivism. An obvious question to consider is whether sex offender notification systems more effectively reduce recidivism than registration systems. It is commonly assumed that alerting community members to nearby sex offenders takes away their opportunities for reoffending. However, an American study found no statistically significant difference between recidivism rates in Washington for sex offenders subject to community notification versus those subject to registration.³² On the contrary, while registration was found to have little effect on recidivism, notification systems actually *increased* recidivism by limiting the ability of offenders to live a life without crime. This may be because notification systems have a higher

²⁸ Carol Berkowitz, ‘Sex Offender Registration: Balancing the Rights of the Individual with the Public Good—A Commentary on Comartin, Kernsmith, and Miles’ (2010) 19(226) *Journal of Child Sexual Abuse* 226, 227.

²⁹ Kim Curtis, ‘California ‘Loses’ 33,000 Sex Offenders’ *Associated Press* (San Jose, California) 8 January 2003.

³⁰ Richard Tewksbury, ‘Validity and Utility of the Kentucky Sex Offender Registry’ (2002) 66(1) *Federal Probation* 381, 384.

³¹ Jill Levenson and L.P. Cotter, ‘The Effects of Megan’s law on Sex Offender Reintegration’ (2005) 21(1) *Journal of Contemporary Criminal Justice* 49-66.

³² R. Lieb, ‘Community Notification Laws: ‘A Step Towards More Effective Solutions’ (1996) 11 *Journal of Interpersonal Violence* 298-300.

incidence of police tracking and arrest than registration systems.³³ Research has also found more severe punishment acts as an incentive for offenders to rebel against the system and reoffend, as will be explored in section 2.2.2 of this report,³⁴ which is fitting given that notification systems *are* arguably more harsh than registry systems.

A study in Michigan measured four factors that contribute to a person's likelihood to commit crimes, including the:

1. difficulty and cost to the offender to commit the crime (factor 1);
2. perceived probability of being caught (factor 2);
3. severity of punishment (factor 3); and
4. benefits of the crime on the individual (factor 4).³⁵

While both registration and notification laws have the potential to decrease recidivism by increasing factors 2 and 3, offenders can easily disappear from police radar and commit new crimes without these factors presenting themselves.³⁶ This is because SORNs impede offenders' ability to seek jobs, accommodation and social connectedness, which isolates them from society. In turn, this increases the potential benefits that crime presents for their livelihood (factor 4), without increasing the difficulty and cost of committing such crimes (factor 1). Ultimately, Prescott notes that while crime against neighbours may be less attractive, or possible, that SORNs may do little more than change the neighbourhood in which offenders look for victims, or shift the category of crimes that offenders are forced to commit to survive.³⁷

1.2 - INTERNATIONAL PERSPECTIVES

The effectiveness of sex offender registers is often measured by differences in the rates of recidivism.³⁸ This section will present the effectiveness of sex offender registries as perceived in different jurisdictions. It is significant to note that whilst there have been studies supporting the notion that SORs do not reduce recidivism,³⁹ other arguments exist to provide an insight into the overall effectiveness of sex

³³ Office of Sex Offender Sentencing, 'Global Overview of Sex Offender Registration and Notification Systems' (Research Report, April 2014) 7.

³⁴ Kirk Williams and Richard Hawkins, 'Wife Assault, Cost of Arrest, and the Deterrence Process' (1992) 29 *Journal of Research in Crime and Delinquency* 292-310.

³⁵ JJ Prescott and Johan Rockoff, 'Do Sex Offender Registration and Notification Laws Affect Criminal Behaviour?' (Discussion Paper No 8, John M Olin Centre for Law and Economics, University of Michigan, 30 November 2009) 50.

³⁶ *Ibid* 51.

³⁷ *Ibid* 50.

³⁸ Rachel Bandy, 'Measuring the Impact of Sex Offender Notification on Community Adoption of Protective Behaviours' (2011) 10(2) *Criminology and Public Policy* 237, 237.

³⁹ *Ibid*.

offender registers. Further, Gelb accurately notes that recidivism rates found in literature are likely to represent conservative estimates; this should be understood to be a limitation of the data used in this report.⁴⁰

Table 1: Effectiveness of SORs in difference jurisdictions

United States	
Overview	<ul style="list-style-type: none"> • A national sex offender registration was enacted in 1994. International travel notice is required for sex offenders. The duration of registration varies depending on different state jurisdictions, however for the federal level, annual, quarterly, etc. check ins are required.⁴¹
Effectiveness	<ul style="list-style-type: none"> • Studies conducted in Iowa⁴² and Washington on registered sex offender recidivism rates did not conclude that there is any statistical significant difference in rates of recidivism between registered sex offenders and control groups. • However, the Washington study did conclude that registered offenders who were subject to notification and registration requirements, did in fact commit more crimes, but those new crimes were not necessarily sexual offences.⁴³ • More recent findings on the effectiveness of sex offender registers is more mixed, as reported benefits are also considered. Such benefits include enhanced policing efforts and surveillance methods in communities. In a paper, Vess makes reference to a study by Prescott and Rockoff (2008) and states that they <i>'did find that registration appeared to be associated with decreased sexual recidivism by known sex offenders (specific deterrence), but not with a change in the incidence of sex crimes committed by individuals not known to have sexually offended previously (general deterrence). This study also noted that community notification appeared to produce a general deterrence effect, but not a specific deterrence</i>

⁴⁰ Above n 16, 13.

⁴¹ Office of Sex Offender Sentencing, 'Global Overview of Sex Offender Registration and Notification Systems' (Report, April 2014) 25.

⁴² G Adkins, D Huff and P Stageberg, 'The Iowa Sex Offender Registry and Recidivism' (Report, Iowa Department of Human Rights, 2000) 1.

⁴³ D Schram and C Milloy, 'Community notification: A study of offender characteristics and recidivism' (1995) *Washington State Institute for Public Policy* 1.

	<p><i>effect – in fact, community notification was associated with an increase in sex offender recidivism.</i>⁴⁴</p> <ul style="list-style-type: none"> • The United States Department of Justice comments that the effectiveness and overall value of SORs ultimately rests on the accuracy of the information within it. The workload and resource limitations on law enforcement agencies in ensuring accurate data may affect registry implementation effectiveness.⁴⁵ • Further, a 2009 South Carolina study followed 2,970 sex offenders and found that there is no strong link between registration and recidivism for sexual crimes, as offenders who were not registered had a 11% sexual recidivism rate whilst registered offenders had a 9% sexual recidivism rate.⁴⁶ • The overall attitude in the United States is that sex offenders are more likely to reoffend with crimes, but not necessarily crimes of a sexual nature.
Australia	
Overview	<ul style="list-style-type: none"> • A national sex offender registration was enacted in 2004. There is no public notification at the national level, however Western Australia has a public registry. The scope of sexual offences caught under the scheme varies from state to state. The states have their own SORs and do share their data.⁴⁷
Effectiveness	<ul style="list-style-type: none"> • A Western Australian (2002) study followed a large group of 2,165 convicted male sex offenders that were referred to the Sex Offender Treatment Unit. After 7 years, results of re-offence were examined. This long follow up period allowed a more accurate measure of recidivism as most offenders are likely to reoffend within the first 2 years after release into the community.⁴⁸ After 7 years, results revealed that:

⁴⁴ James Vess , Andrew Day, Martine Powell and Joe Graffam ‘International sex offender registration laws: research and evaluation issues based on a review of current scientific literature’ 15(4) *Police Practice and Research* 1, 3.

⁴⁵ Ibid 4.

⁴⁶ J Levenson, E Letourneau, K Armstrong, & K Zgoba, ‘Failure to register as a sex offender: Is it associated with recidivism?’ (2009) 27(3) *Justice Quarterly* 1.

⁴⁷ Above n 35.

⁴⁸ Above n 16.

	<ul style="list-style-type: none"> ○ ‘10.7% of sex offenders had been arrested for a sexual offence on their first arrest after release ○ 16.8% had been arrested for a violent offence ○ 49.7% had been arrested for any criminal offence.’⁴⁹ <ul style="list-style-type: none"> ● Overall, Australian studies reveal that sex offenders should not be considered as a ‘homogeneous specialist group’, but rather as similar to general criminal offenders. This is because they are not specialist offender as there is ‘considerable versatility’ in the offences they commit, not just sexual offences.⁵⁰ ● Wortley and Smallbone conclude that ‘Sex offenders should not be seen as sexual deviants, but as opportunity takers who have generalised difficulties with self-control, especially within their interpersonal domain.’⁵¹ Consequently, the focus in Australia has moved away from sex offender registers towards sex offender rehabilitation programs to reduce recidivism rates. ● A Victorian (1998) study evaluated the effectiveness of the Male Adolescent Program for Positive Sexuality, which was established by the state government’s Department of Human Services as a community rooted intervention program for young males convicted of sexual offences.⁵² ● Young males who had completed the program were 8 times less likely to reoffend than other young people who had not completed a rehabilitation program. Specifically, out of the 138 young offenders who took part in the program from 1993-1998, only 5% committed further sexual offences.⁵³
Canada	
Overview	<ul style="list-style-type: none"> ● A national sex offender registration was enacted in 2004. There is no public notification at the national

⁴⁹ D Greenberg, J Da Silva and N Loh, ‘Evaluation of the Western Australian Sex Offender Treatment Unit (1987–1999): A Quantitative Analysis’ (2002) *University of Western Australia*.

⁵⁰ Above n 16, 23.

⁵¹ R Wortley and S Smallbone ‘Applying Situational Principles to Sexual offending Against Children’ in R Wortley and S Smallbone (eds.) *Situational Prevention of Child Sexual Abuse* (Criminal Justice Press, 2006).

⁵² Above n 16, 39.

⁵³ D Chung, P O’Leary and T Hand, ‘Sexual Violence Offenders: Prevention and Intervention Approaches’ (Research Paper, Australian Centre for the Study of Sexual Assault, 2006).

	<p>level, however Alberta and Manitoba have restricted sex offender registry web pages. Nearly all sexually related offences are caught under the scheme.⁵⁴</p>
Effectiveness	<ul style="list-style-type: none"> • Friscolanti reveals a common hostile opinion against the Canadian sex offender registration scheme in his paper, emphasising that ‘<i>Canada's sex offender registry is so flawed, hundreds of molesters and criminals have gone missing.</i>’⁵⁵ One in five sex offenders in Quebec are missing.⁵⁶ Out of 16,295 offenders on the national registry, 1,270 are non-compliant.⁵⁷ • Research is yet to be completed which provides insight on the effectiveness of Canada’s sex offender registers.⁵⁸
United Kingdom	
Overview	<ul style="list-style-type: none"> • The sex offender registration was enacted in 1997. International travel notice is required for sex offenders on the register. The duration for the registration ranges from 2 years to life, and sex offenders must update any changes to their circumstances within 3 days of any change. The United Kingdom scheme does not have notification laws or residency requirements barring offenders from living near schools.⁵⁹
Effectiveness	<ul style="list-style-type: none"> • United Kingdom literature focuses on notification schemes as being part of SORs. Section 82 of the Sexual Offences Act 2003 made it a requirement for any person sentenced to 30 months imprisonment for a sexual offence to notify the police their residency and travel details for an indefinite period of time. There was no legal avenue for review for such requirements. • In the United Kingdom case of <i>R (on the application of F) and Thompson v. Secretary of State for the Home Department</i> [2010] UKSC, the Court held that public notification scheme as part of sex offender register implementation was ‘<i>a disproportionate interference</i>

⁵⁴ Above n 35.

⁵⁵ Michael Friscolanti, ‘A National Embarrassment’ (2008) 121(1) *Macleans* 46, 47.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Above n 1, 70.

⁵⁹ Office of Sex Offender Sentencing, ‘Global Overview of Sex Offender Registration and Notification Systems’ (Report, April 2014) 24.

	<p><i>with a convicted offender's right to private life under Article 8 of the European Convention on Human Rights and declared section 82 incompatible with the Convention on this basis.'</i>⁶⁰ It was held that such burdens were not required for offenders who no longer possessed a significant risk of reoffending.⁶¹</p> <ul style="list-style-type: none">• Thus, the focus in the United Kingdom is not on notification requirements or even on residency restrictions, like it is in the United States. The focus is rather on monitoring methods of sex offenders. For example, a study revealed that 70% of sex offenders regularly interviewed with polygraphs revealed information relevant to treatment compared to 15% in a control group.⁶²
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⁶⁰ Antje Du Bois-Pedain, 'Once a Sex Offender, Always a Reoffending Risk?' (2010) 69(3) *Cambridge Law Journal* 428.

⁶¹ *Ibid.*

⁶² Autumn Long, 'Sex Offender Laws of the United Kingdom and the United States: Flawed Systems and Needed Reforms' (2009) 18(145) *Transnational Law and Contemporary Problems* 146, 160.

PART TWO:

DO THE DETRIMENTAL IMPACTS OF SEX OFFENDER REGISTRIES OUTWEIGH THEIR BENEFIT IN REDUCING CRIME?

2.1 - ECONOMIC IMPACTS

2.1.1 - Costs of implementation

The prevalence of sexual offences and the mounting social costs have contributed to the proliferation of SORs in multiple jurisdictions. The discourse surrounding the success rates of SORs is contentious as the feasibility and cost of implementing and maintaining an SOR, relative to its success, has frequently been overlooked. The use of case studies involving a cost benefit analysis of SOR implementation in jurisdictions that have implemented SORs will inform the framework in which a comparable cost-benefit analysis of SOR implementation can be benchmarked. The studies below will establish the effectiveness of SORs and in turn assess the efficiencies with respect to whether the benefits of implementation outweigh the costs.⁶³

Case Study 1: Cost of Compliance – SORNA

The *Sex Offender Registration and Notification Act* (SORNA) implements comprehensive minimum standards for sex offender registration in the United States,

⁶³ Ian Elliott, Anthony Beech, 'A UK Cost-Benefit Analysis of Circles of Support and Accountability Interventions' (2012) 25(3) *Sexual Abuse: A Journal of Research and Treatment* 211, 219.

with specific legislative aims centred on closing loopholes and strengthening the nationwide response to sexual offences.⁶⁴ Registrants are required to provide their personal information (i.e. name, address, social security number, vehicle description etc.) to the US National Sex Offender Registry, a database of information accessible by members of the general public. States are responsible for implementing SORNA, whereby non-compliance with SORNA will result in federal justice funding (i.e. Byrne Money) being withheld by 10%.⁶⁵

In addition to the costs of implementation detailed above, the SORNA program itself lacks substantial funding,⁶⁶ whereby US Congress has allocated \$39 million in funding compliance at a state level, an amount intended to supplement the costs incurred by forty-three states in the US.

Findings

The Justice Policy Institute (JPI), a US based non-profit organisation that researches incarceration policies, provides an estimate of the itemised additional costs of SOR implementation expenditure. Such items include:⁶⁷

- Additional personnel and training expenditure;
- Software costs i.e. licensing fees, installation, maintenance, administration and technician costs;
- Additional prison space and facilities;
- Increased administrative and court fee expenditure; and
- Legislative costs including cost of policy implementation.

In lieu of the non-compliance penalty, JPI have conducted cost-benefit analyses to determine the feasibility of SOR implementation in some US states. Overwhelmingly, JPI's findings suggest the forecast first-year implementation costs significantly exceed the 10% funding penalty, whereby the majority of state funding grants would be apportioned to the administrative maintenance of the registry,⁶⁸ rather than investigating and prosecuting instances of sexual offending. The outcome of JPI's cost-benefit analysis suggested the economic cost of SORNA implementation are disproportionate to the benefits obtained, particularly considering that SOR implementation has not been linked to reducing the number of sexual offences committed.⁶⁹

⁶⁴ Jennifer Wang, 'Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act' (2014) 59 *New York Law School Law Review* 681, 688.

⁶⁵ Donna Lyons, 'Down to the Wire: As the deadline approaches to comply with federal rules on sex offenders, some states are saying "no thanks"' (2011) *State Legislatures* 26, 27.

⁶⁶ Above n 67, 696.

⁶⁷ Ibid 695.

⁶⁸ Justice Policy Institute, *What will it cost states to comply with the Sex Offender Registration and Notification Act?*, 2008, Justice Policy Institute <http://www.justicepolicy.org/images/upload/08-08_fac_sornacosts_jj.pdf>

⁶⁹ Ibid.

The table below outlines JPI's findings.

Table 2: First year SOR costs versus 10% funding penalty⁷⁰

	SORNA Implementation Estimate for 2009	Byrne Money Received in 2006 ⁷	10 Percent of Byrne Money
ALABAMA	\$7,506,185	\$3,178,628	\$317,863
ALASKA	\$1,108,573	\$565,971	\$56,597
ARIZONA	\$10,281,201	\$3,653,881	\$365,388
ARKANSAS	\$4,597,925	\$2,180,442	\$218,044
CALIFORNIA	\$59,287,816	\$21,876,819	\$2,187,682
COLORADO	\$7,885,178	\$2,725,489	\$272,549
CONNECTICUT	\$5,680,602	\$2,189,001	\$218,900
DELAWARE	\$1,402,612	\$1,248,534	\$124,853
DISTRICT OF COLUMBIA	\$954,186	\$1,804,991	\$180,499
FLORIDA	\$29,602,768	\$12,402,693	\$1,240,269
GEORGIA	\$15,481,193	\$5,594,288	\$559,429
HAWAII	\$2,081,603	\$933,732	\$93,373
IDAHO	\$2,431,969	\$1,170,003	\$117,000
ILLINOIS	\$20,846,306	\$8,501,000	\$850,100
INDIANA	\$10,291,799	\$3,696,033	\$369,603
IOWA	\$4,846,488	\$1,881,623	\$188,162
KANSAS	\$4,502,553	\$2,035,999	\$203,600
KENTUCKY	\$6,879,497	\$2,702,451	\$270,245
LOUISIANA	\$6,963,401	\$3,514,704	\$351,470
MAINE	\$2,136,456	\$1,172,583	\$117,258
MARYLAND	\$9,112,724	\$4,320,568	\$432,057
MASSACHUSETTS	\$10,461,238	\$4,353,201	\$435,320
MICHIGAN	\$16,336,082	\$6,793,169	\$679,317
MINNESOTA	\$8,430,328	\$3,061,831	\$306,183
MISSISSIPPI	\$4,734,150	\$2,065,269	\$206,527
MISSOURI	\$9,534,548	\$4,182,382	\$418,238
MONTANA	\$1,553,611	\$1,076,424	\$107,642
NEBRASKA	\$2,878,281	\$1,288,957	\$128,896
NEVADA	\$4,160,944	\$1,808,095	\$180,810
NEW HAMPSHIRE	\$2,134,219	\$1,192,435	\$119,244
NEW JERSEY	\$14,088,206	\$5,160,709	\$516,071
NEW MEXICO	\$3,195,121	\$1,879,901	\$187,990
NEW YORK	\$31,300,125	\$11,279,841	\$1,127,984
NORTH	\$14,696,622	\$5,460,983	\$546,098
NORTH DAKOTA	\$1,037,592	\$554,556	\$55,456
OHIO	\$18,598,869	\$6,223,825	\$622,383
OKLAHOMA	\$5,867,138	\$2,790,472	\$279,047
OREGON	\$6,078,218	\$2,251,312	\$225,131
PENNSYLVANIA	\$20,165,479	\$7,640,322	\$764,032
RHODE ISLAND	\$1,715,760	\$967,292	\$96,729
SOUTH CAROLINA	\$7,149,123	\$3,610,292	\$361,029
SOUTH DAKOTA	\$1,291,426	\$513,858	\$51,386
TENNESSEE	\$9,985,946	\$4,817,782	\$481,778
TEXAS	\$38,771,924	\$14,045,713	\$1,404,571
UTAH	\$4,290,617	\$1,557,034	\$155,703
VERMONT	\$1,007,649	\$630,419	\$63,042
VIRGINIA	\$12,508,695	\$3,943,036	\$394,304
WASHINGTON	\$10,491,519	\$3,538,816	\$353,882
WEST VIRGINIA	\$2,939,046	\$1,679,108	\$167,911
WISCONSIN	\$9,085,630	\$2,982,833	\$298,283
WYOMING	\$848,009	\$584,036	\$58,404

Jenning and Zgoba analysed the cost-effectiveness of SORNA, taking a three-step approach in their analysis of the cost and benefits of implementing an SOR.⁷¹ Their study analyses the forecasted social and financial costs associated and incurred, specifically with respect to the social value of SORNA implementation, reduction of sexual victimisation and the crime reduction.

⁷⁰ Ibid.

⁷¹ Wesley Jennings, Kristen Zgoba, 'An Application of an Innovative Cost-Benefit Analysis Tool for Determining the Implementation Costs and Public Safety Benefits of SORNA with Educational Implications for Criminology and Criminal Justice' (2015) 26 *Journal of Criminal Justice Education* 147.

A high-level overview of the methodology is as follows:

- (1) An estimate of the economic value of resources consumed by individuals receiving the intervention;⁷²
- (2) An estimate of the outcomes achieved per unit;⁷³ and
- (3) The transformation of the measured outcomes into a unit of currency.⁷⁴

Policy costs

Jenning and Zgoba note the difficulties of forecasting the cost of SOR implementation. These costs include fixed costs specifically, and administrative or implementation costs. Fixed costs are often borne once, irrespective of the future scope of the program. Variable costs are borne consistently, and based on the numbers of sexual offender registrants. In the study, variable rates were forecasted by using discounted rates to predict the future value of currency.⁷⁵ These costs are difficult to forecast given they often represent future costs.

In the US, the implementation of SORNA is subject to both fixed and extraordinary variable costs. Given the legislative and often onerous requirements of SORNA, its implementation will result in increasing numbers of registrants that are monitored by the SOR and as such has the propensity to extensively increase the variable costs associated with SOR implementation. The cost benefit analysis is represented by a ratio that includes the dollar value of ‘social benefits’ compared against programming expenditure. Jennings and Zgoba hypothesise that at a 5% discount rate, the 10-year variable expenditure related to SORNA maintenance would require USD\$4.83 million of government funding annually.⁷⁶

Case Study 2: Am. Sub. S.B.17 – Ohio

The US state of Ohio legislated *Am. Sub. S.B.17* a law that provides testimonial privilege for clerics and prescribes mandatory reporting provisions of a person if it is reasonably suspected that they are involved in the abuse, suffering (physical or mental) or child neglect.⁷⁷ In implementing the legislative provisions, the state of Ohio outlined the costs of implementation in a Local Impact Statement Report⁷⁸ that included analogous costings to SOR implementation. These costings comprise of:

1. administrative costs of mandatory reporting
2. investigative resources / personnel; and
3. increased incarceration costs.

The Fiscal Note & Local Impact Statement is extracted below for reference.

⁷² Ibid, 151.

⁷³ Above n 74,151.

⁷⁴ Ibid.

⁷⁵ Between 1 and 10%.

⁷⁶ Above n 74, 158.

⁷⁷ State of Ohio, *Local Impact Statement Report*, September 2007, Legislative Service Commission, <<https://www.lsc.ohio.gov/documents/gaDocuments/analyses126/06-sb17-126.pdf>>

⁷⁸ Ibid.

Investigative resources / personnel

Given the implementation of a registry, there is increased possibility that reporting numbers of alleged offenders (i.e. sexual offenders) will rise. As such, investigative resources will increase given the likelihood of increased complaints to authorities. This is forecast to amount to \$110.17 per complaint and \$1,418.59 to investigate a complaint. As an individual state may receive thousands of complaints annually, the investigative resources have the propensity to be significant, relative to the number of complaints received.

Incarceration costs

There is increased possibility that more offenders may be sentenced under the laws. As such, the monetary onus is borne predominately by the Department of Rehabilitation and Correction's Annual incarceration and post-release control costs (or local country equivalent). This cost was forecast to represent approximately \$100,000 per year for Ohio.

Case Study 3: Cost of implementation - Juvenile offenders

Juveniles are frequently affected by SOR models. While the cost of implementation regarding juvenile offenders is not necessarily a perfect representation of the implementation costs for offenders generally, it is nevertheless important to consider juvenile offenders across different models. Accordingly, Bezler conducted a cost-benefit study specifically documenting the costs of SOR implementation on juvenile sex offenders in the US,⁸⁰ as a response to the *Adam Walsh Act 2006*.⁸¹ The findings suggest that overwhelmingly the costs of SORs are borne by three parties:

1. government agencies required to maintain and process registrants
2. the convicted sex offender; and
3. families of offenders

⁸⁰ Richard Belzer, 'The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification' (2015) 41 *R Street Policy Study* 1, 4.

⁸¹ *Adam Walsh Act 2006* H.R. 3132 and S. 1086.

Table 3: Cost of applying registration laws to juvenile sex offenders⁸²

COST TYPE	CALCULATED QUANTITY	UNIT VALUE (\$)	ANNUAL(\$M)	PRESENT VALUE (\$M)
On juvenile offenders (paperwork) ^a				
Registered juveniles (5%)	32,713	1,000	30	400
Registered juveniles (17%)	109,044	1,000	100	1,000
Registered juveniles (33%)	196,279	1,000	200	3,000
On juvenile offenders (family alienation) ^b	0	0	0	0
On juvenile offenders (GPS monitoring) ^c	0	0	0	0
On juvenile offenders' families ^d				
Registered juveniles (5%)	65,426	3,000	200	2,000
Registered juveniles (17%)	218,088	3,000	700	9,000
Registered juveniles (33%)	392,558	3,000	1,000	20,000
On government (registry maintenance) ^e				
Registered juveniles (5%)	32,713	300	10	100
Registered juveniles (17%)	108,044	300	30	400
Registered juveniles (33%)	196,279	300	100	1,000
On government (foster care) ^f	0	0	0	0
On government (GPS monitoring) ^g	0	0	0	0
On innocent registrants ^h	0	0	0	0
COSTS OF REGISTRATION				
Registered juveniles (5%)			200	4,000
Registered juveniles (17%)			800	10,000
Registered juveniles (33%)			2,000	20,000
All values reported with one significant figure.				

a. Minor gap. No credible estimates in literature. Includes cost for registering and maintaining registration. Three alternative fractions of the proportion of registrants listed for juvenile offenses.

b. Minor gap. No credible estimates in literature. In some states, registration may trigger exclusion from living at home if victim is family member. Should be: "Not applicable if residential exclusion is a sanction independent of registration. Social cost is value of family alienation.

c. Minor gap. No credible estimates in literature. In some states, registration may trigger requirement for GPS monitoring. Direct cost to offenders is minor; indirect costs may be significant.

d. Major gap. No credible estimates in literature. Three alternative fractions of percent registrants listed for juvenile offenses. Family effects resulting from relational association assumed to be 3x paperwork burdens on offenders.

e. Minor gap. No credible estimates in literature. Cost is in-person paperwork processing. Three alternative fractions of % registrants listed for juvenile offenses.

f. Minor gap. No credible estimates in literature. In some states, registration may trigger exclusion from living at home if victim is family member. Not applicable if residential exclusion is a sanction independent of registration. Social costs are expenditures on administration and social work.

g. Minor gap. No credible estimates in literature. In some states, registration may trigger exclusion from living at home if victim is family member. Not applicable if residential exclusion is a sanction independent of registration. Social costs are expenditures on monitoring.

h. Major gap. No credible estimates in literature. Registrants not responsible for subsequent offenses are subject to heightened scrutiny. Scrutiny may lead to inadvertent or improper disclosure of registration status, with cost similar to those listed under Notification. Some innocent registrants may be falsely charged, and a few may be falsely convicted.

⁸² Above n 83, 7.

Cost to government

The management and maintenance of SORs by government agencies demands that additional staffing requirements be met to monitor offender compliance and facilitate the operation of the registry, in line with its legislative objectives. The government cost incurred to maintain and enforce an SOR is forecasted to be USD\$300 per offender. This constitutes annual expenditure of USD\$10 million to USD\$100 million.⁸³ Given this number is a forecast of juvenile offender registration only, the annual costs to maintain an SOR for all offenders would far exceed this estimate.

Cost to offender

Individual offenders bear significant administrative costs to meet their responsibilities of registration. This ‘paperwork burden’ is estimated to cost the individual offender approximately USD\$1,000 per annum.⁸⁴ These costings are reflected in the unit value of paper work costs in the above table. As such, the estimated costs of the ‘paperwork burden’ placed on offenders is between USD \$30 million to USD\$200 million.⁸⁵ Given the forecasts related to juvenile offenders, often this burden falls on the family members of the offenders.

Cost to families

In addition to carrying the paperwork burden on behalf of the registrant, family members (often parents) carry an additional opportunity cost burden due to the requirements of registration impinging on their capacity and time to work. Belzer estimates this lost opportunity cost to equate to approximately USD\$200 million to USD\$1 billion on families of offenders annually.⁸⁶

Benefits

Belzers’ study forecasted the social benefits resulting from SOR implementation based on the best available study that suggests registration to reduce sex-offence recidivism by about one-eighth.⁸⁷ In the US, approximately 70,000 cases of sexual offending are reported annually, and 14,000 of these cases are presumed to have been committed by juvenile offenders.⁸⁸ Belzer hypothesises an arrest rate of 50%. On the assumption that 90% of offenders arrested are convicted and as such, registered on an SOR, approximately 800 instances of juvenile sexual offending was calculated to be prevented annually.⁸⁹

⁸³ Richard Belzer, ‘The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification’ (2015) 41 *R Street Policy Study* 1, 6.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, 5.

⁸⁷ *Ibid.*, 2.

⁸⁸ *Ibid.*, 4.

⁸⁹ *Ibid.*, 5.

In order to forecast the benefit to produce a tangible and numerical outcome, Belzer multiplied the number of sex offences committed year (70,000) by the percentage proportion of juvenile offenders (20%) and from this number, estimated the value of offence avoidance as calculated to being USD\$100,000 (as at 1987) as extracted in the table below.⁹⁰ To derive the value of offence avoidance as at 2015, this value was inflated at the Consumer Price Index of 2.09 ($\$100,000 \times 2.09 = \$209,000$). As such the annual benefit estimated by Belzer amounts to approximately USD\$200 million.⁹¹

2.1.2 - Conclusions

SORs are implemented to establish a comprehensive network that monitors sex offenders. However, the costs involved in SOR implementation are significant, as demonstrated by the US implementation of SORNA and other similarly comparable studies involving offender registration and expenditure forecasting. The significant initial and ongoing investment in SOR do produce social benefits in the form of reduced numbers of sex offences perpetrated, albeit these numbers are minimal. Through the case studies analysed above, the quantitative difference achieved by SOR implementation is considered incommensurate when compared to the monetary investment required to adequately and successfully facilitate an SOR. As such, prior to the implementation of an SOR, a state's fiscal approach should be considered. Without this, SORs are limited in scope and efficiency.⁹²

2.2 – SOCIAL IMPACTS

Sexual offender registries were originally intended to protect the public from sexual violence perpetrated by registered sex offenders in their communities.⁹³ Accordingly, the implementation of SORs often reflects knee jerk reactions borne out of community outrage with respect to the prevalence of sexual assault. Legislative provisions in response to these community reactions further exacerbate moral panic. As such, SORs are often hastily implemented, without a sophisticated consideration of the substantial and often violent, social, political and economic repercussions to the perpetrator, their families, and the community at large.⁹⁴

⁹⁰ Ibid, 6.

⁹¹ Ibid, 6.

⁹² Wang, Jennifer, 'Paying the Piper: The Cost of Compliance with the Federal Sex Offender Registration and Notification Act' (2014) 59 *New York Law School Law Review* 681, 705.

⁹³ Above n 26, 205.

⁹⁴ Richard Tewksbury and Matthew Lees, 'Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences' (2006) 26(3) *Sociological Spectrum* 309, 313.

2.2.1 - Impacts on Offenders

There are numerous collateral consequences flowing from SORs that result in harsh punishment for offenders. Researchers have categorised challenges associated with SORs into three main categories: unemployment, residency restrictions, and isolation and stigmatization.⁹⁵

Unemployment

Obtaining employment with a criminal record is a challenge. Most SORs prevent offenders from working with children, and require criminal history to be presented upon job application.⁹⁶ This results in widespread unemployment, meaning that offenders are unable to afford housing or basic life necessities. Often, families and friends are unwilling to assist offenders due to the social bias surrounding the nature of their crimes. These challenges may motivate offenders to commit crimes, in order to survive.⁹⁷ Many offenders are calling for criminal history on job application to be called for on a 'need to know basis' to lessen these practical challenges.⁹⁸

Residency Restrictions

In the US, most states have laws that prevent offenders living close to areas where children frequently visit, including schools, parks and playgrounds or bus-stops.⁹⁹ Because such facilities are common, offenders struggle to find housing except in low-income areas, and many are forced to sleep in tents, the woods, or on the street.¹⁰⁰ In these areas there is often a lack of public transport, making it difficult to work, or adhere to probation or parole.¹⁰¹ Further, it decreases the social capital and support networks available.¹⁰²

⁹⁵ Richard Tewksbury and Matthew Lees, 'Perceptions of Punishment: How Registered Sex Offenders View Registries' (2007) 53(3) *Crime and Delinquency* 380; Danielle Tolson and Jennifer Klein, 'Registration, Residency Restrictions, and Community Notification: A Social Capital Perspective on the Isolation of Registered Sex Offenders in Our Communities' (2015) 25(5) *Journal of Human Behaviour in the Social Environment* 375, 380; Richard Tewksbury and Patrick Connor, 'Incarcerated Sex Offenders' Perceptions of Family Relationships: Previous Experiences and Future Expectations' (2012) 13(2) *Western Criminology Review* 25-35.

⁹⁶ Above n 10, 378.

⁹⁷ Jessica Henry, 'Criminal History on a 'Need to Know' Basis: Employment Policies that Eliminate the Criminal History Box on Employment Applications' (2008) 5(2) *Justice and Policy Journal* 212, 220.

⁹⁸ *Ibid.*

⁹⁹ Jill Levenson and Richard Tewksbury, 'Collateral Damage: Family Members of Registered Sex Offenders' (2009) 34(1-2) *American Journal of Criminal Justice* 54-68.

¹⁰⁰ G Palone 'Ever-growing Tent City of Sex Offenders has Neighbours Worried' *Central Florida News* (online) 20 August 2012 <http://www.cfnews13.com/content/news/cfnews13/news/article.html/content/news/articles/cfn/2012/8/20/ever_growing_tent_ci.html>.

¹⁰¹ Above n 9, 25-35.

¹⁰² Jill Levenson and L.P. Cotter, 'The Effects of Megan's law on Sex Offender Reintegration' (2005) 21(1) *Journal of Contemporary Criminal Justice* 49-66.

Isolation

Offenders often find themselves isolated as a result of unemployment and residency restrictions, and also because of negative social perceptions. As discussed at 1.1, labelling individuals as sex offenders and notifying communities of their whereabouts contributes to a culture of fear and hatred. Many offenders struggle to re-establish connections made prior to imprisonment or choose to withdraw socially and live remotely, which makes registry supervision an issue.¹⁰³ Therefore SORs, by their very nature, discourage social interaction and bonding, which weakens bonds with both society and the state and leads to increased opportunity and motive to reoffend.¹⁰⁴

A Negative Cycle

The common barriers of unemployment, residency restrictions and isolation faced by offenders combine to severely limit their social capital. Prior research has indicated that a reduction in social capital and violation of social bonds with the community is highly correlated with recidivism, and also mental health issues.¹⁰⁵ Considering the practical challenge of being released from prison and transitioning from prison to 'normal life' again, many offenders regard SORs as an 'additional prison sentence' due to the additional barriers accompanying such registers.¹⁰⁶

This negative cycle is largely catalysed by a reduction in social capital caused by SORs. This is the product of an 'upsurge in moral panic'¹⁰⁷ whereby the community acknowledges an epidemic of sexual offending that has developed a heightened awareness and distain for registrants.¹⁰⁸ This social exclusion confines a registrant's ability to develop and maintain relationships within the family unit and as such, limits a registrant's capacity to easily access socially valued community resources.¹⁰⁹ As explored more at 2.4.1 in this report, this stigmatisation and social isolation of registrants often extends to families, who by association also experience this exile. This further disrupts the registrant's relationship with family members, causing them to experience total social exclusion and isolation.

Comartin examined registrants' relationships with individuals outside of their family circles, through a series of focus groups undertaken with mothers of convicted sex offenders.¹¹⁰ Respondents of the focus group highlighted their concerns with respect to their son's romantic relationships, emphasising their vulnerability and their susceptibility to false accusations.

¹⁰³ Above n 10.

¹⁰⁴ James Coleman, 'Social Capital in the Creation of Human Capital' (1988) 94 *American Journal of Sociology* 95-120.

¹⁰⁵ Above n 10.

¹⁰⁶ *Ibid.*

¹⁰⁷ Above n 66, 691.

¹⁰⁸ *Ibid.*

¹⁰⁹ Danielle Bailey, Jennifer Klein, 'Ashamed and Alone: Comparing Offender and Family Member Experiences with Sex Offender Registry' (2018) *Criminal Justice Review* 1, 5.

¹¹⁰ Above n 26.

A respondent noted:

*'I can say unequivocally that I am not worried about sexually inappropriate behaviour by my son, but I am worried about how vulnerable he is to false accusations. Our society has created an environment in which sheer spite or rumours of prior offense can spur new false accusations.'*¹¹¹

Additionally, Comartin documented the unintended consequences of SORs on family members of sex offenders who often report significant instances of stress by virtue of their familial association with the convicted registrant.¹¹² A respondent recalls an experience her niece encountered whereby her classmates used information from SORs as the basis of a practical joke. The respondent noted:

*'Everybody thought this [practical joke] was tremendously funny and she was just sitting there, aching inside because she can't really talk about it... had she defended her cousin, she might have sacrificed her personal reputation...'*¹¹³

These experiences highlight the unintended repercussions faced by families of offenders placed on SORs. The collateral consequences of sexual offender registration are profound and extend far beyond the individual offender to family members of registrants who often experience the social isolation and feelings of shame associated with registration that limits their access to socially valued resources, and infringes on their capacity to contribute and participate within their communities.

Tewksbury and Levenson (2009) surveyed the families of registered sex offenders,¹¹⁴ asking them about the stress and loss they incurred as a result of registration and community notification (SORN).¹¹⁵ Over two thirds of the families admitted to regularly suffering from stress.¹¹⁶ A vast majority of families felt 'alone and isolated because of SORN.'¹¹⁷ Furthermore, 80% of the families surveyed 'lost friends or a close relationship because of SORN.'¹¹⁸ Below is a table outlining the degree of loss and stress the families experienced:¹¹⁹

¹¹¹ Above n 26, 212.

¹¹² Above n 110, 4.

¹¹³ Above n 26, 215.

¹¹⁴ Richard Tewksbury and Jill Levenson, 'Stress experiences of family members of registered sex offenders' (2009) 47 *Behavioural Sciences & the Law* 611.

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ Above n 230.

¹¹⁹ *Ibid.*

Table 1. Types of stress and direct loss experienced by RSOs' loved ones (%)

	Yes	Very often	Fairly often	Sometimes	Almost never	Never
Sex offender registration and notification (SORN) has caused stress in my life.	68.2	17.6	11.7	1.4	1.1	
I feel alone and isolated because of SORN.	55.3%	21.9	15.6	4.3	2.9	
I have lost friends or a close relationship because of SORN.	35.9	14.0	30.0	9.9	10.2	
I am afraid for my safety because of SORN.	32.7	16.1	29.7	12.2	9.3	
Shame and embarrassment due to SORN keep me from engaging in community activities.	48.8	17.5	19.0	5.9	8.8	
Experienced property damage.	27					
Had to move out of a residence where I lived due to residence restrictions or community pressure	31					

Analysing the above research, it can be argued that SORNs have adverse effects on non-criminal members of the community.

Case Study: Michael Groff

Edward Martone suggests that SORs are merely 'illusions of safety' and only create a climate for vigilante justice.¹²⁰ He recalls the occasion where in the early hours of the morning in Phillipsburg N.J, 'two men forced their way into a house' in search of the 25 year old Michael Groff, a paroled sex offender.¹²¹ They were made aware of the paroled offender's location by the police, who had previously issued a community notification.¹²² The men had entered, announcing that they were looking for the child molester, followed by then assaulting the wrong man.¹²³ This was not an isolated incident.¹²⁴ In Washington, further assaults, arson, vandalism and loss of employment have been the consequence of notification systems of the SOR.¹²⁵ In endeavouring to enhance community safety, lawmakers should resist adopting measures that may result in greater harm than good.¹²⁶ Further, it appears that the draconian restrictions and adverse consequences induced by registration make it less likely that compulsive sex offenders will seek the appropriate help and treatment.¹²⁷ Instead, they are more likely to run away from families and hide out; subjecting the public to increased risks by lessening the benefits of the register.¹²⁸ Thus, it can be suggested that SORNs are not as beneficial to the public as they promise to be.

¹²⁰ Edward Martone, 'No: mere illusion of safety creates climate of vigilante justice' (1995) 81 *ABA Journal* 39.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

2.2.2 - Perpetrator Perspectives

Most research conducted into the social impacts of SORs focuses on broad social aspects of SORs – including the effect on offenders, communities and families, with very little research being conducted regarding the actual perceptions of offenders themselves. As a result, the needs of offenders are rarely considered when designing legal policies. This is largely because the protection that SORs provide to the community comes at the expense of offender freedoms. Arguably, this balance has become unjustifiably skewed in favour of victims and the community by overlooking the fundamental physical and emotional needs of offenders themselves.¹²⁹ A better understanding of how sex offenders perceive and are affected by SORs would help to improve policies and achieve better outcomes.¹³⁰

Offender Perceptions of SORs

Contrary to the intention of SORs to reduce recidivism, research has shown that SORs can increase offenders' motivation to reoffend due to resulting lifestyle instability, psychological and emotional damage, lack of support,¹³¹ isolation, stigmatisation and ostracism and shame.¹³² Research shows that regardless of the objective severity of punishment,¹³³ offenders who perceived their punishment as fair and appropriate were less likely to reoffend,¹³⁴ whereas those who perceived their punishment as unduly harsh, unjustified or inappropriately administered were more likely to act out against those who they saw responsible for inflicting that punishment.¹³⁵

In order to reduce recidivism rates, offender perceptions should be taken into account to establish the level of punishment offenders perceive to be 'fair and appropriate' as opposed to 'unduly harsh'. Notably, this does not mean that punishment cannot be significantly punitive, but that offenders should have the opportunity to give recommendations or feedback on their experiences.¹³⁶ Currently, this is not the case. Instead, many offenders who regard punishment as unduly harsh cannot express these concerns in constructive ways, and instead act out against those inflicting such punishment.¹³⁷ Stigmatisation and isolation are punishments inflicted by the community, and unemployment and residency restrictions are punishments inflicted

¹²⁹ Carol Berkowitz, 'Sex Offender Registration: Balancing the Rights of the Individual with the Public Good—A Commentary on Comartin, Kernsmith, and Miles' (2010) 19(226) *Journal of Child Sexual Abuse* 226, 227.

¹³⁰ Above n 96, 387.

¹³¹ Above n 11.

¹³² Sarah Craun and Poco Kernsmith, 'Juvenile Offenders and Sex Offender Registries: Examining the Data Behind the Debate' (2006) 70(3) *Federal Probation* 45-49.

¹³³ Above n 96, 387.

¹³⁴ Kirk Williams and Richard Hawkins, 'Wife Assault, Cost of Arrest, and the Deterrence Process' (1992) 29 *Journal of Research in Crime and Delinquency* 292-310.

¹³⁵ Joan Petersilia and Piper Deschenes, 'What Punishes? Inmates Rank the Severity of Prison Versus Intermediate Sanctions' (1994) 58(1) *Federal Probation* 3-8; Lawrence Sherman, 'Defiance, Deterrence and Irrelevance: A Theory of the Criminal Sanction' (1993) 30 *Journal of Research in Crime and Delinquency* 445-473; Lawrence Sherman and Richard Berk, 'The Specific Deterrent Effects of Arrest for Domestic Assault' (1984) 49(1) *American Sociological Review* 261-272.

¹³⁶ Above n 96, 387.

¹³⁷ Above n 121.

by the state. These challenges may explain why offenders act out against the community and the state, and experience social isolation and increased recidivism.

In fact, interviews with offenders have revealed that they experience harassment, isolation and stigmatisation, violence, employment difficulties, loneliness and even homicide. In a survey of 121 registered sex offenders, Tewksbury (2005) found that 16.2% had been assaulted, 47% suffered harassment, 45.3% were denied places of residence, and 42.7% lost employment.¹³⁸ In a follow-up study, Tewksbury & Lees (2006) conducted 22 in-depth interviews with offenders in Kentucky USA, and found that offenders reported difficulties finding employment and forming personal relationships, and frequently suffered stigmatisation.¹³⁹

Mental Health Impacts

Notably, when unemployment, residency restrictions and isolation occur in a negative cycle, sex offenders often suffer from mental health issues, and may even commit suicide as a result. Human Rights Watch relays a comment made by a sex offender who struggled with this:

“I thought of suicide because I felt people were talking bad about me. Maybe some people want for me to die. Maybe that's what this law is about, to cause enough stress on the offender so he will take his own life.”¹⁴⁰

Other interviewees reported that they had to seek counselling from mental health professionals due to common suicidal thoughts. Others further reported abusing drugs as a form of escape from the challenges of everyday life, including the struggle to make friends, feelings of failure and helplessness, and depression.¹⁴¹ The families of offenders also reported feeling fearful that their loved ones would commit suicide. A mother whose son was registered as a sex offender for having sex with his underage girlfriend stated:

“He is failing in all areas of life and has often said that he should just kill himself. I do believe that there are already young men...who like my son feel that a lifetime sentence for a youthful offense is just too damming... If I cannot get help soon I will lose him and not to a prison, but to the ultimate absolute: death.”¹⁴²

It is difficult to argue that the ramifications of SORNs including mental illness, drug abuse, loneliness, and suicide, are justified or deserved consequences of registration,

¹³⁸ Above n 95.

¹³⁹ Above n 95, 313.

¹⁴⁰ Human Rights Watch, ‘No Easy Answers, Sex Offender Laws in the US’ (Research Discussion Paper, 11 September 2007).

¹⁴¹ Ibid.

¹⁴² Ibid.

particularly for juvenile or first-time offenders. Yet, this is how the law operates in many jurisdictions worldwide. Commentators suggest, however, that the current cost and effort put into maintaining SORNs means that rehabilitation programs are simply not affordable.¹⁴³ This is despite the fact that increasing offenders' social capital, encouraging the formation of positive relationships, and accessing professional counselling services is likely to decrease recidivism, and the negative effects caused by SORNs.¹⁴⁴

Regarding recidivism, research has shown that offenders who have social capital – that is, married, employed or with children - are more likely to be deterred by SORNs, but that offenders without such connections experienced increased rates of shame, rage, violence, and further crime.¹⁴⁵ Rehabilitation and social re-entry programs are therefore crucial to reduce not only recidivism, but also to improve mental health and encourage positive outcomes. Nevertheless, current SORN models most often emphasise deterrent and community protective features at the expense of rehabilitation and social re-entry programs.¹⁴⁶

2.2.3 - Victim Perspectives

Unreported Victims

According to the Human Rights Watch, children are often the victims of rape and sexual assault.¹⁴⁷ For this reason, sexual offences are frequently underreported, and as such, the total number of victims far exceeds the number of reported incidents.¹⁴⁸ Further, this indicates that there is greater number of sexual offenders in society than crime statistics account for. The US National Institute of Justice discovered that only 19% of women who were victims of rape reported the crime to police.¹⁴⁹ This gap clearly exposes a deficiency in the American criminal justice system, which includes SORNs. On this measure, the first step in responding to sexual offences – reporting of offences by victims – does not appear to have been greatly affected by the implementation of SORNs.

¹⁴³ Above n 10.

¹⁴⁴ Ibid.

¹⁴⁵ Above n 96, 387.

¹⁴⁶ Above n 10.

¹⁴⁷ Human Rights Watch, 'No Easy Answers, Sex Offender Laws in the US' (Research Discussion Paper, 11 September 2007).

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

Rates of disclosure in the US are listed in the table below, as extracted from Ortega's book 'Sexual Harassment and Sex Offenders':

Table 4: Disclosure rates in the USA

Victims	Data
Victims between the ages of 18-24	Approximately 20% of female student victims and 32% of female nonstudent victims between the ages of 18 and 24 reported to the police, as measured between 1995 and 2013. ¹⁵⁰
Children under the age of 18	Approximately 60-70% of child abuse victim have delayed their disclosure or never disclosed their sexual abuse.
Males Victims	Of the 5 - 10% of males that experience child sexual abuse, ¹⁵¹ it takes 21 years on average to report their sexual assault, and about 28 years to be able to discuss their experience in depth. ¹⁵²
Adult Women	Only 19% of American women report their sexual assault immediately.

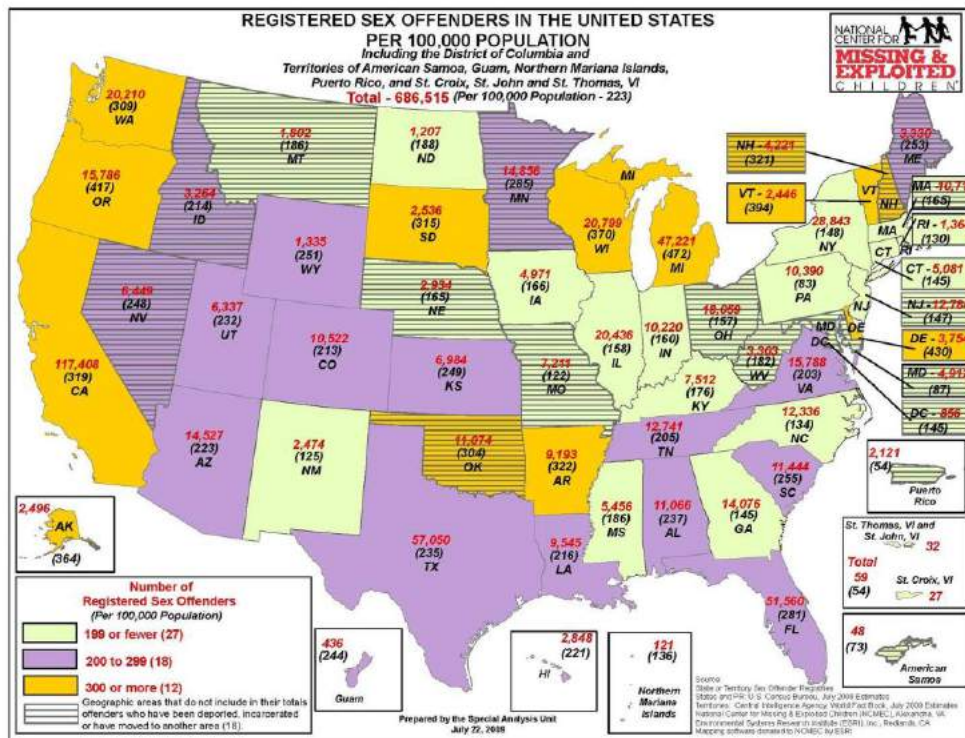
This raises issues about the purpose of the SOR; particularly when it will only apply to convicted offenders; the minority of offenders in society.

¹⁵⁰ Ortega H, *Sexual Harassment and Sex Offenders: Patterns, Coping Strategies of Victims and Psychological Implications* (Nova Publishers, 1st ed, 2015) 335.

¹⁵¹ Ibid.

¹⁵² Ibid.

SORs in the USA



This is an image showing the registered sex offenders per 100,000 people in the USA:¹⁵³

Currently, there are approximately 237,868 victims of reported rape and sexual assault per year in the US, and on average, a sexual offense occurs every two minutes.¹⁵⁴ With regards to the above statistics, it seems that there is an issue of unreported victims in the USA.

There are many social barriers that may prevent victims from reporting. One barrier is that child victims 'may fear negative consequences such as distrust of parents, feeling of shame, or hesitation to burden their parents.'¹⁵⁵ Further, many victims may not even know the severity of their sexual experience as a criminal act and therefore go unreported.¹⁵⁶ Stigmatisation and embarrassment may also be associated with being a sexual assault victim.¹⁵⁷

Abuse via Technology

In today's online environment, it is increasingly possible for sex offenders and child predators to sexually abuse victims. The Internet facilitates the 'solicitation of minors,

¹⁵³ SOL Research, 'Introduction to the Sex Crime Registries' (28 January 2009) Research on sex laws and their effects on people <http://www.solresearch.org/report/Introduction_to_Sex_Crime_Registries>.

¹⁵⁴ Ortega H, *Sexual harassment and sex offenders: patterns, coping strategies of victims and psychological implications* (Nova Publishers, 1st ed, 2015) 335.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Miccio-Fonseca, 'Comparative Differences in the Psychological Histories of Sex Offenders, Victims, and Their Families' (1996) 23 *Journal of Offender Rehabilitation* 71.

possession and distribution of child pornography, sexual harassment and abuse, and stalking.’¹⁵⁸ Studies show that approximately 1 in 7 (13%) youth Internet users receive unwanted sexual solicitations.¹⁵⁹ Accordingly, law enforcement agencies have struggled to monitor and deter offenders, due to the high volume of internet communications occurring across national and international boundaries.¹⁶⁰ In this context, SORs and SORNs become increasingly ineffective, as offenders can remain anonymous and hide their identity online.

2.2.4 - Conclusions

Despite their purported benefits, SORs and SORNs have numerous negative consequences resulting from their introduction. Research commonly categorises the main challenges facing offenders as being: unemployment, residency restrictions and isolation and stigmatisation. When experienced simultaneously, these challenges combine to cause sex offenders to lose their social capital and support, thus destroying family relationships, causing mental health issues, and often resulting in suicide. It is therefore unsurprising that many offenders see SORs as ‘additional prison sentences’, as they significantly limit the freedom experienced by offenders post prison release. Resulting from a destroyed relationship between offenders and the state, SORs may even cause offenders to ‘rebel’ against the system, leading to increased recidivism. Accordingly, the perspectives of sex offenders should more often be taken into account in order to construct better SOR systems. Further, victim perspectives should also be taken into account, as SORs do little to address the low reporting of sex offences in society. Ultimately, the detrimental effects of SORs are significant, and arguably outweigh the benefits of introducing such systems.

2.3 – LEGAL IMPACTS

2.3.1 - Implementation

The implementation of SORs presents issues of concern. The rationale for implementing SORs in the US is that informing the public of one’s criminal history will assist in offering protection to a community.¹⁶¹ However, the US Federal Government Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking suggests that SORs ‘have been implemented in the absence of empirical evidence regarding their effectiveness.’¹⁶²

¹⁵⁸ Ibid.

¹⁵⁹ SNOPW, ‘*Facts and Statistics*’ (undated) The U.S Department of Justice <[https://www.nsopw.gov/\(X\(1\)S\(jxlp4zccc0kt3qqsuwdfetax\)\)/en/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#technology](https://www.nsopw.gov/(X(1)S(jxlp4zccc0kt3qqsuwdfetax))/en/Education/FactsStatistics?AspxAutoDetectCookieSupport=1#technology)>.

¹⁶⁰ Ibid.

¹⁶¹ Trevor Hoppe, *Are Sex Offender Registries Reinforcing Inequality* (9 August 2017) The Conversation <<http://theconversation.com/are-sex-offender-registries-reinforcing-inequality-79818>>.

¹⁶² Ibid.

The label of ‘sex offender’ denotes very serious consequences and life-long stigmatisation, and SORs ensure that continuous monitoring procedures are imposed upon sex offenders, even if they have served their entire jail sentence.¹⁶³ This extended punishment is considered constitutionally justified in the US, as SORs are not perceived as ‘criminally punitive’ but rather an aspect of a wider ‘civil regulatory scheme.’¹⁶⁴ It is important to consider the implementation of SORs, as their effects on individuals are life-long. Despite the community protection that registries provide, they must ensure that ‘those who face these measures are, in fact, as dangerous as they are purported to be.’¹⁶⁵

Disconnect Between ‘Sexual Offense’ and ‘Sexual Offender’

SORs illustrate that a disconnect exists between the terms ‘sexual offense’ and ‘sexual offender’, as some individuals who have committed crimes without any sexual element are placed on sexual offender registries.¹⁶⁶ Such offenders are treated in exactly the same way, being stigmatised by the community as sexual offenders. The case study of the Wisconsin sex offender registry will be considered in this report.

The law for Wisconsin’s sex offender registry contains a list of offences, which require compulsory registration.¹⁶⁷ This registry does not distinguish between sexual offences and crimes which are not sexually motivated, as out of twenty seven specific offences in the Wisconsin statute, two do not require any sexual element.¹⁶⁸ Also, there is a secondary list of offences which may not contain any sexual element, but the courts may exercise their discretion and classify as a sexual offence.¹⁶⁹ The *Jacob Wetterling Act*¹⁷⁰ includes kidnapping and false imprisonment as sexual offences as it was explained in the jurisprudence behind the Act that the two crimes are supposedly inherently linked to sexual misconduct against children, and are therefore necessary to create a complete database of offenders in the community.¹⁷¹ However, as highlighted by the US case of *State v Smith*, this has proved to be problematic in certain scenarios.¹⁷²

¹⁶³ Laura Marie Crylen, ‘Badgering Sex Offenders: Problems with Wisconsin’s Sex Offender Registry and the Mandatory Registration for Non-Sexual Crimes’ (2010) 36 *Journal of Legislation* 375.

¹⁶⁴ *Ibid.*

¹⁶⁵ Above n 151.

¹⁶⁶ *Ibid.*

¹⁶⁷ Wis Stat, § 301.45 (2005-06).

¹⁶⁸ *Ibid.*

¹⁶⁹ Above n 151.

¹⁷⁰ *Violent Crime Control and Law Enforcement Act* H.R. 3355, 103d Cong. (2d Sess. 1994).

¹⁷¹ 42 USC § 14071(a)(3)(A) (2006).

¹⁷² 780 N.W.2d 90 (Wis. 2010).

State v Smith¹⁷³

In *State v Smith*, the facts concerned a failed drug exchange. Smith, a seventeen-year-old, held another seventeen-year-old male in a car. Smith was convicted as a sex offender as the offence was classified as a false imprisonment of a minor, which required Smith to register as a sex offender and to update the state of Wisconsin every year with his personal information. As a result, Smith was not permitted to reside near schools or work in certain occupations, and was required to disclose his sex offender status if he wished to attend university or college.¹⁷⁴ Crylen summarises the situation of Smith to be lacking in proportionality of punishment to the crime:

*“It is undeniable that Smith committed a crime for which he should be punished. However, it is unlikely that he poses a threat of sexual violence to the community, and his actions clearly do not constitute that of a sexual offense as understood in common terms.”*¹⁷⁵

The case of *State v Smith* therefore warns other jurisdictions of the ethical issues arising from including non-sexual crimes such as false imprisonment and kidnapping in sexual offender registries, which is a common phenomenon. In fact in the New York case of *People v Knox*¹⁷⁶, the Court of Appeals of New York used the ‘rational basis test’ to assert that kidnapping should remain as an offence in their sexual offender registry as the standard ‘was not a demanding one’ and were held to not be an abuse of the court’s discretion.¹⁷⁷ However, the difference between New York and Wisconsin’s approaches are that in New York, the offences of kidnapping and false imprisonment are classed as lower level offences and the New York courts have greater discretion to include them as being sexual offences.¹⁷⁸ Whilst individuals who break the law to conduct drug offences should be punished legally, they should not be punished beyond the scope of punishment and penalties pursuant to drug conviction laws to constitute sexual offences where a minor is involved, if none can be proven.

Furthermore, Wisconsin has established a *Sex Offender Apprehension and Felony Enforcement Initiative (SAFE)* to assist in the implementation of their stringent sexual offender laws.¹⁷⁹ Registry specialists and retired law enforcement officers are responsible for the functioning of SAFE. The key aims of SAFE are to:

1. hold sexual offenders accountable for their actions.
2. prevent sexual offenders from becoming anonymous.

¹⁷³ *State v Smith* 780 N.W.2d 90 (Wis. 2010).

¹⁷⁴ Above n 151.

¹⁷⁵ *Ibid.*

¹⁷⁶ *People v Knox* 903 N.E.2d 1149 (N.Y. 2009).

¹⁷⁷ *Ibid* 381.

¹⁷⁸ *Ibid.*

¹⁷⁹ Laura Marie Crylen, ‘Badgering Sex Offenders: Problems with Wisconsin’s Sex Offender Registry and the Mandatory Registration for Non-Sexual Crimes’ (2010) 36 *Journal of Legislation* 382.

3. apprehend and prosecute offenders who do not comply with their reporting requirements.¹⁸⁰

Moreover, it is often the case that sexual offender registries do not provide discretion to consider intent of minors before labelling them as a ‘sexual deviant’.¹⁸¹ Minors who have engaged in behaviour deemed to be ‘curious’ at an age where they are not too aware of the consequences of their actions can lead to their names being placed on the registry and being labelled as ‘sexual offenders’.¹⁸² This is especially problematic in cases where two minors engage in consensual sex.¹⁸³

Racial, Socio-economic Disparities in Sex Offender Registries

Racial and socio-economic disparities exist in the US in how SORs are implemented and monitored. On face value, data reveals that the average sex offender in the United States is a forty five year old white male.¹⁸⁴ Sexual offences are male dominated crimes, as data reveals that 98 % of sexual offenders in the United States are male.¹⁸⁵ As shown in the Table: 5, compiled by Trevor Hoppe, less than 1% of sex offenders were of Asian or Pacific Islander descent, 1.2% were American Indian, 6.8% were of Hispanic origins, 20% were African American, and two thirds of the entire sex offender population were white Americans.¹⁸⁶ However, it becomes significant to consider how such proportions align with the general population of the United States.

Table 5: Demographic snapshot of sex offender population

Demographic Snapshot of Sex Offender Population		
	Frequency	Percent
<i>Gender (n = 605,038)</i>		
Male	590,988	98
Female	14,050	2
<i>Race (n = 598,697)</i>		
White	398,776	67
Black	145,055	24
Asian	5,735	< 1
American Indian	7,371	< 1
Hispanic	40,809	7
Other	951	< 1
<i>Age (n = 584,602)</i>		
< 18	552	< 1
18–24	25,631	4
25–44	262,027	45
45–64	248,344	42
65+	48,048	8
Average age	45	

¹⁸⁰ Ibid 382.

¹⁸¹ Emanuella Grinberg, ‘No Longer a Registered Sex Offender, But the Stigma Remains’, *CNN* (online) 11 February 2010, <<http://www.cnn.com/2010/CRIME/02/11/oklahoma.teen.sex.offender/index.html?hpt=C2>>.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Trevor Hoppe, ‘Punishing Sex: Sex Offenders and the Missing Punitive Turn in Sexuality Studies’ (2016) 41(3) *Law and Social Inquiry* 573, 582.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid 583.

Research reveals that in every single state in the United States except for Michigan, African American males were part of a significantly higher rate when compared to white American males.¹⁸⁷ In fourteen states, African Americans were subjected to sex offender registration rates twice as high than white Americans.¹⁸⁸ In the states of Oregon, Wisconsin, Iowa, Massachusetts and New Jersey, the sexual offender registration rates for African Americans are at least three times higher than rates for white Americans.¹⁸⁹ The overall registration rates are for African American: White American is roughly 501 v 238 sex offenders per 100,000 persons, which translates to 1 out of 119 African American men are registered as sex offenders (this equates to approximately 1% of African American men being labelled as sex offenders).¹⁹⁰ The racial inequality in the implementation of the SORs is a significant issue for concern.

Furthermore, in the states of Montana, North Dakota, South Dakota, Arizona and Wisconsin, the rates for sex offender registration of American Indians are at least two times higher than white Americans.¹⁹¹ In fact in Alaska, American Indians were registered at a rate seven times higher than white Americans.¹⁹² It is interesting to note that despite there being notable reductions in overall correctional populations, there is continuing increase in sex offender registration rates.¹⁹³

Hoppe argues that beyond race issue, sex offender registry policies are likely to have dire repercussions on class inequality.¹⁹⁴ Notification policies, public registries and even systems such as having red ‘sex offender’ stamps on drivers licenses (as required in the US state of Louisiana) may contribute to unemployment gaps between African Americans and white Americans.¹⁹⁵ Further, placing limitations and boundaries on where an offender can live may place them in locations of low socio-economic status, which further widens the class gap between African and white Americans.¹⁹⁶

Residency Restriction Laws and Impact on Offender Rehabilitation

Studies done by Human Rights Watch and the American Civil Liberties Union solidify the claim that SORs do more harm than good in the United States as the inclusion of residency restriction laws impede the rehabilitation of sex offenders.¹⁹⁷ Twenty states in the United States have residency restriction laws attached to their SORs, which prohibit sex offenders from living within the vicinity of day care centres, parks, schools and other locations associated with children.¹⁹⁸ The American

¹⁸⁷ Ibid.

¹⁸⁸ Ibid

¹⁸⁹ Ibid

¹⁹⁰ Ibid 584.

¹⁹¹ Ibid

¹⁹² Ibid

¹⁹³ Ibid.

¹⁹⁴ Ibid 590.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Human Rights Watch, *India Sex Offender Registry Not the Answer* (27 April 2018)

<<https://www.hrw.org/news/2018/04/27/india-sex-offenders-registry-not-answer>>.

¹⁹⁸ Above n 125.

Civil Liberties Union argue that residency restriction laws actually make the community less safe as offender rehabilitation is hindered, increasing the likelihood of re-offence.¹⁹⁹ This is because such laws prevent a person from re-integrating into the community and limit their access to services, homes, resources, jobs and support systems, which has the potential of forcing offenders to place themselves in isolation with copious amounts of stress constantly being applied by community members with acts of vigilantism and also constant monitoring by police officers.²⁰⁰ This basically results in failure in post-release rehabilitation of sex offenders who have already served their time in jail.²⁰¹

The Human Rights Watch stated that in some cities in the United States some sex offenders have found that there are no places to live. For example, Orange County, Florida has a 1,000 foot restricted barrier zone around certain sites such as attractions, bus stops, day cares, schools and parks, which has resulted in only 5% of the city's residential areas being outside of the restriction zones.²⁰² Almost 50% of sex offenders reported that residency restriction laws have prevented them from living with family members and limited them to accessing support networks.²⁰³ The California Research Bureau released a report which found that Californian parole officers have difficulty in finding housing for sex offenders who are being released back into the community after serving their sentences, and concluded that communities would be placed in greater danger by leaving the sex offenders homeless or forcing them underground and off the registries, as they would not be able to access services for rehabilitation.²⁰⁴

Max C, a registered sex offender on the sex offender registry of Georgia revealed to the Human Rights Watch:

*"I can honestly say that I have nowhere to live in the community I have lived in for 30 years."*²⁰⁵

The Human Rights Watch also interviewed the mother of a sex offender registered in Florida who gave an email statement about her son's difficulty in locating a place to live after being released into the community:

"My husband and I wanted him to come live with us for a while, while he got adjusted to life on the outside and got on his feet. He was not allowed to do so because we live within 1,000 ft. of a school bus stop. So he had to go to a

¹⁹⁹ American Civil Liberties Union, *Why Sex Offender Laws do More Harm Than Good* (1999) <<https://www.aclu-nj.org/theissues/criminaljustice/whysexoffenderlawsdomoreharm/>>.

²⁰⁰ Ibid

²⁰¹ Ibid

²⁰² Paul Zandbergen and Timothy C Hart, 'Reducing Housing Options for Convicted Sex Offenders: Investigating the Impact of Residency Restriction Laws Using GIS' (2006) 8(2) *Justice Research and Policy* 1.

²⁰³ Above n 125.

²⁰⁴ Marcus Nieto and David Jung, 'The Impact of Residency Restrictions on Sex Offenders and Correctional Management Practices: A Literature Review' (2006) *California Research Bureau* 1.

²⁰⁵ Above n 125.

*different county, where he had no support system. He was placed in a dirty disgusting motel because it was the only place he could find to live. It was next door to a XXX nudie place. He had to be in his motel room from 6 pm until 7am daily. He could not attend church services and church support groups due to this time constraint. He was very lonely and depressed. The motel was very expensive and between that and paying for probation and counseling, he was finding himself further and further in the hole financially. He eventually started drinking again and violated parole by staying out too late.*²⁰⁶

Further, in Texas, registered sex offenders are prohibited from spending nights in homeless shelters that are within certain restricted areas. The Human Rights Watch spoke to William K who revealed his experiences in this regard:

*“I was homeless-I went to two homeless shelters-told them the truth-I was a registered sex offender-I could not stay. No one helps sex offenders I was told. The 3rd shelter I went to-I did not tell them. I was allowed to stay, November 2002 I was to register again-my birthday. If I told them I lived at a shelter-I would be thrown out-if I stayed on the streets I would not have a [sic] address to give-violation. So I registered under my old address-the empty house, which was too close to a school. Someone called the police-told them I did not live at that address anymore-! I was locked up, March 2003. I was given a 10-year sentence for failure to register as a sex offender.”*²⁰⁷

In addition, the residency restriction requirements of SORs do not take into consideration the circumstances and risk levels of offenders who have successfully completed rehabilitation programs. Fred McCaw, a county attorney in Iowa stated his concern, noting ‘the law doesn't take into account the ones that have behaved themselves for however many years and have done the rehabilitation programs and are now contributing members of the community. None of that is considered.’²⁰⁸ For example, the Human Rights Watch spoke with John A who has spent the last 20 years working at a Christian shelter aimed to assist homeless men. John A was convicted of rape in 1984 and was placed on the sex offender register in Georgia. He wanted to continue his work in the Christian faith as he had been rehabilitated and had become a devout Christian. However, due to residency restriction laws this was not possible in Georgia, so he left the United States in 2006 to become a missionary in Costa Rica.²⁰⁹ He stated that:

“I did not see how it would be possible to continue to live in Georgia and be allowed to work with Christian-based shelters... I had a feeling that Georgia

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Emily Block, ‘Authorities Say New Sex Offender Law Flawed: Residency Limits Could be an Enormous Waste of Time for Those Enforcing Them’, *Telegraph Herald* (Dubuque IA) 8 September 2005.

²⁰⁹ Above n 125.

will not be the last state to pass a law restricting where sex offenders can live.”²¹⁰

This report therefore concludes that SORs hinder a sex offender’s ability to re-integrate into the community and therefore negatively affects their chances of rehabilitation.

2.3.2 - Human Rights Impacts

Does Introducing SORs Breach International Human Rights Conventions?

No international human right document exists that expressly prohibits operation of a SOR, community notification system or residency restriction. Despite this, these measures do seem to contradict a number of fundamental human rights guaranteed to all human beings.

Sexual Offender Registries interfere with a number of fundamental individual human rights provided in the International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR).

This can include, but is no limited to:

- privacy;²¹¹
- not be subjected to degrading treatment or punishment;²¹²
- security of person;²¹³
- freedom of movement and liberty;²¹⁴
- work;²¹⁵
- protection of family, and; ²¹⁶
- an adequate standard of living.²¹⁷

While difficult to enforce, international legal consensus stipulates that the law can only interfere with these rights when this interference serves a legitimate public interest, and imposes minimum restrictions to the individual.²¹⁸ The Human Rights

²¹⁰ Above n 125.

²¹¹ *Universal Declaration of Human Rights*, GA Res 217A (III) UN GAOR 3rd Sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 12.

²¹² *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, GA Res 2200A (XXI) (Entered into force 3 March 1976) art 7.

²¹³ *Universal Declaration of Human Rights*, GA Res 217A (III) UN GAOR 3rd Sess, 183rd plen mtg, UN Doc A/810 (10 December 1948) art 3.

²¹⁴ *Ibid* art 13.

²¹⁵ *Ibid* art 6.

²¹⁶ *Ibid* art 10.

²¹⁷ *Ibid* art 11.

²¹⁸ Above n 125.

Committee of the United Nations has established an objective standard of compliance to be equally upheld when a law interferes with rights provided by the ICCPR; a standard to be upheld when other fundamental human rights guarantees are obstructed. The standard is that interference of the ICCPR must be consistent with its provisions, aims and objectives, and be as unobtrusive and unrestrictive as possible.²¹⁹ Furthermore, human rights must not be denied arbitrarily, and restrictions of these rights must be rational and evidenced-based.²²⁰

Article 16 of the *Convention on the Rights of the Child* (CRC) provides that ‘no child shall be subject to arbitrary or unlawful interference with his or her privacy.’²²¹ CRC is complementary to other human rights safeguards, demonstrating the additional protection that children require. This fundamental human right cannot co-exist with SOR laws that place children on the register, particularly if the register is complemented with community notification.

Besides, given that a large proportion of perpetrators of child sexual abuse are persons close to the child or incest, including their own fathers, what impact will it have on the child victim and the family to have their father or even brother on a SOR? Will the child and the family face stigmatisation? Is it in the best interest of the child victim?

In light of their inconsistency with international human rights guarantees, it appears unlikely that SORs, community notification systems and residency restrictions can be justified. As discussed in this report, there is little available evidence suggesting that SORs indeed prevent or deter sex crimes against children. Furthermore, SORs and even more so, community notification and residency restrictions, are neither justifiable nor proportional.

2.3.3 - Conclusions

The implementation of SORs presents various issues of concern, which must be considered. SORs illustrate that disconnect exists between the terms ‘sexual offender’ and ‘sexual offence’ as individuals who have committed crimes without any sexual element can be placed on the register. As discussed above, case of *State v Smith* (false imprisonment of minor without sexual element) is an example of how it is necessary to provide more discretion to the court to decide whether the criminal should also be placed on the registry, as registration can have long term punishment effect on the criminal, even after they have served a jail sentence. Further, racial and socio-economic disparities exist in the implementation of SORs, particularly in the US where statistics reveal that African American males are subjected to being labelled

²¹⁹ Human Rights Committee, Views: Communication No 488/1992, 15th sess, U.N. Doc. CCPR/C/50/D/488/1992, (25 December 1991) para 8.3 (‘Toonen v Australia’).

²²⁰ Above n 125.

²²¹ *Convention on the Rights of the Child*, opened for signature 20 November 1989, GA Res 44/25 (entered into force 2 September 1990) art 16.

‘sex offenders’ at much higher rates than other racial classes. Moreover, SORs hinder a sex offender’s ability to re-integrate into the community, negatively affecting their chances of rehabilitation. Finally, SORs contradict international human rights guarantees.

2.4 – INDIAN CONTEXT

So far, this report has discussed the practical challenges of implementing SORs. The preceding analysis has focussed primarily on Western jurisdictions, and particularly the US. It is important to examine whether challenges facing these western jurisdictions are transferrable to an Indian context.

2.4.1 - Vigilante Justice

This section will address the repercussions of SORs, with reference to vigilante justice. ‘Vigilante justice’ describes the situation where a community believes that governing authorities have not delivered justice, and as a result, takes the law into their own hands.²²² Arguably, this is one of the worst repercussions that sex offenders face.

Human Rights Watch has revealed after conducting interviews with sex offenders, that vigilante repercussions are an extremely serious and prevalent concern for sex offenders trying to reintegrate back into the community:

‘Former offenders included on online sex offender registries endure shattered privacy, social ostracism, diminished employment and housing opportunities, harassment, and even vigilante violence. Their families suffer as well. Registrants and their families have been hounded from their homes, had rocks thrown through their home windows, and feces left on their front doorsteps. They have been assaulted, stabbed, and had their homes burned by neighbors or strangers who discovered their status as a previously convicted sex offender. At least four registrants have been targeted and killed (two in 2006 and two in 2005) by strangers who found their names and addresses through online registries. Other registrants have been driven to suicide, including a teenager who was required to register after he had exposed himself to girls on their way to gym class. Violence directed at registrants has injured others. The children of sex offenders have been harassed by their peers at school, and wives and girlfriends of offenders have been ostracized from social networks and at their jobs.’²²³

²²² Meena Radhakrishna, ‘Crime of Vigilante Justice’ (2008) 43(2) *Economic and Political Weekly* 16.

²²³ Above n 126.

The above statement recounts vigilante repercussions occurring in the US. Registries typically list details such as residential address, place of employment, and photos.²²⁴ Accordingly, Meagle argues that ‘offender-specific information available on the site would enable motivated individuals to stalk, harass, or even harm the registered offenders.’²²⁵

Human Rights Watch conducted interviews in relation to the appropriate rehabilitation needed for offenders. A respondent noted:²²⁶

*“When people see my picture on the state sex offender registry they assume I am a paedophile. I have been called a baby rapist by my neighbors; feces have been left on my driveway; a stone with a note wrapped around it telling me to “watch my back” was thrown through my window, almost hitting a guest. What the registry doesn't tell people is that I was convicted at age 17 of sex with my 14-year-old girlfriend, that I have been offense-free for over a decade, that I have completed my therapy, and that the judge and my probation officer didn't even think I was at risk of reoffending. My life is in ruins, not because I had sex as a teenager, and not because I was convicted, but because of how my neighbors have reacted to the information on the internet”*²²⁷

While information on convicted offenders can be used for notifying the community, it can also have grave negative consequences for the offender. Megale found that the people on the register often suffer stigmatization,²²⁸ including ‘...threats, harassment, and property damage committed against sex offenders.’²²⁹ Her study found that approximately one fifth of individuals placed on a registry in the US suffered from such consequences.²³⁰ Conceivably, this proportion would be greater in an Indian context.

2.4.1 - The Indian Criminal Justice System

As vulnerable members of society, the protection of children is highly important. Accordingly, it is important to provide a specific and detailed analysis of how the criminal justice system has responded to sex crimes against children. The National Crime Records Bureau’s Report *Crime in India 2016* reveals that the number of sex crimes against children is on the rise in India.²³¹ According to the Report, there is an

²²⁴ Ibid

²²⁵ Elizabeth Megale, ‘Sex Offender Registries a content analysis’ (2011) 47 *Criminal Law Bulletin* 1067.

²²⁶ Above n 126.

²²⁷ Ibid.

²²⁸ Elizabeth Megale, ‘From innocent boys to dirty old men: why the sex offender’s registry fails’ (2011) 47 *Criminal Law Bulletin* 1067.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ NBC News, *India sexual abuse: ‘Four child victims every hour’* (1 December 2017) BBC News <http://www.bbc.com/news/world-asia-india-42193533>.

incident every 15 minutes.²³² Despite the *Protection of Children from Sexual Offences Act 2012*, the high prevalence of sex crimes against children has yet to be significantly reduced.²³³ Evidently, government and law enforcement agencies must implement strategies to not only reduce the rate of sex crimes against children, but also be cost effective, and balance the human rights of victims and convicted offenders. The Indian Government has recently approved as policy, the introduction of a sexual offender database.²³⁴ In deciding whether this measure is likely to be efficient, it is first necessary to examine the efficacy of current crime prevention and punishment mechanisms used in the Indian criminal justice system.

Overburdened Criminal Justice System: Low Conviction Rates

In India, approximately two-thirds of the prisoners are awaiting trial,²³⁵ and there are currently almost 30 million pending cases.²³⁶ Police, courts and prisons are overburdened.²³⁷ For example, from the 2016 figures provided in the Report *Crime in India 2016*, 30.2% of Indian Penal Code (IPC) 'Crimes Cases' were pending police investigation at the end of that year,²³⁸ coinciding with 87.4% IPC Crime pending trial.²³⁹ Of the remaining 12.6%, only 46.8% of these cases ended in conviction,²⁴⁰ amounting to only 5.37% of total cases given to the court resulting in conviction in 2016.²⁴¹ This percentage is even lower for 'Crimes against Scheduled Castes', at 2.58%.²⁴²

Listed in *Crime in India 2016 Statistics*, are a series of tables that document crimes committed under the *Protection of Children from Sexual Offences Act* across the 29 States and 7 Union Territories.²⁴³ Like other statistics provided by this annual report, these statistics are generated from the crime records maintained by the police and the judiciary, at different levels of administrative and legal jurisdictions within the federal system of the country.²⁴⁴ Three tables from the *Crime in India 2016 Statistics* – tables 4A.3, 4A.5 and 4A.7 – are summarised below, which highlight the large discrepancies between the number of cases that are reported to police with the number of cases that are heard in Court, and the number of cases that end in a conviction.

²³² National Crime Records Bureau Ministry of Home Affairs, 'Crime in India 2016: Statistics' (Report No 64, National Crime Records Bureau Ministry of Home Affairs, 2017) 214

<http://ncrb.gov.in/StatPublications/CI/CI2016/pdfs/Crime%20Statistics%20-%202016.pdf>.

²³³ Above n 251.

²³⁴ 'India to join 8 countries having sex offenders database', *The Times of India* (online), 021 April 2018 <

<https://timesofindia.indiatimes.com/india/india-to-join-8-countries-having-sex-offenders-database/articleshow/63860749.cms>>.

²³⁵ Rukimini S, *Two-Thirds of Prison Inmates in India are Undertrials* (30 October 2014) Amnesty International

<https://amnesty.org.in/news-update/two-thirds-prison-inmates-india-undertrials/>.

²³⁶ Soutik Biswas, 'The Crisis facing India's Supreme Court', BBC News, 17 November 2017 <

<http://www.bbc.com/news/world-asia-india-41994842>>.

²³⁷ Above n 251.

²³⁸ Above n 251.

²³⁹ Above n 251.

²⁴⁰ Above n 251.

²⁴¹ Above n 251.

²⁴² Above n 251, 303

²⁴³ Above n 251.

²⁴⁴ Above n 251.

Table 6: Discrepancies between number of cases reported and number of cases heard in Court

These statistics are for crimes committed under the *Protection of Children from Sexual Offences Act*:

Table 4A.3 documents ‘Police Disposal of Crime against Children cases’:

Total cases for investigation: 48060

- Pendency rate: 31.8%

Table 4A.5 documents ‘Court Disposal of Crime Against Children Cases’:

Total cases for trial during the year: 101326

- 10884 trials completed
 - Pendency rate: 89%
- Cases ending in conviction: 3226
 - Conviction rate: 29.6%

Table 4A.7 documents ‘Disposal of Persons Arrested for Crimes Against Children’

Total persons arrested by police: 42196

- Total persons convicted: 3859

The statistics mentioned in the above table correspond to the ‘Police disposal,’ ‘Court Disposal’ and ‘Disposal of Persons Arrested’ for crimes listed under the *Protection of Children from Sexual Offences Act 2012*. While not a perfect reflection of India’s entire Criminal Justice System, these statistics are nevertheless helpful in demonstrating its inability to effectively punish offenders of sex crimes against children. Further, these statistics demonstrate the failure of the justice system to uphold the provisional requirement of the *Protection of Children from Sexual Offences Act 2012* (POSCO), where cases of child sexual abuse must be disposed of within one year from the date the offence is reported.²⁴⁵

Prevalence of Discrimination in the Criminal Justice System

As in the U.S., in India too the economically and socially weaker sections of the society are more likely to be impacted or targeted disproportionately with the implementation of SORs. Regardless of causation, unequal access to legal justice is clearly an issue in India that cannot be ignored. 53% of India’s prisoners comprise of Muslims, *Dalits* and *Adivasis*.²⁴⁶ It is thus conceivable that a sex offender database may yet be another legal mechanism used to perpetuate inequality and injustice among poor and disadvantaged ethnic groups in society.

²⁴⁵ *The Protection of Children from Sexual Offences Act 2012* (India) s 35(2).

²⁴⁶ Subodh Varma, ‘Muslims, dalits and tribals make up 53% of all prisoners in India’. Times News Network, 24 November 2014. <https://timesofindia.indiatimes.com/india/Muslims-dalits-and-tribals-make-up-53-of-all-prisoners-in-India/articleshow/45253329.cms>

Framing of Sexual Offences in India

In India, the *Protection of Children from Sexual Offences Act 2012 (POSCO)* criminalises consensual sexual intercourse between adults and minors, and between minors. A minor is a person under 18 years of age. Unsurprisingly, there have been indications that many cases registered under POCSO have involved under-aged romantic, consenting couples, often with the complaints being made by objecting parents.²⁴⁷ These laws inherently have the propensity to lead to unjust convictions. Further, there is also the risk that undeserving and/or juvenile offenders will be placed onto the register severely impeding upon their ability to live a fruitful happy and normal life; an outcome that has received heavy criticism in the US as discussed earlier in this report.

Underreporting of Sexual Assault against Children

Children account for 37% of India's population.²⁴⁸ Sex crimes against children in India are often perpetrated by friends, family and respected members of society close to the victims.²⁴⁹ Many offenders are unconvicted and known to the victim, rather than a stranger on the street. According to Human Rights Watch, sexual assault particularly regarding children is 'underreported in India because of the social stigma, victim-blaming, poor response by the criminal justice system, and lack of any national victim and witness protection law.'²⁵⁰ In this regard, perhaps the issue that India must confront lies with remedying the structures in place for initial reporting of sex crimes, particularly those committed against children.

2.4.2 - Conclusions

Since beginning to embrace industrialisation and modernization in the latter half of the 20th century, India has subsequently experienced mass urbanization and population growth. This has corresponded with a dramatic increase in rates of cognizable crimes for which police and courts have been unable to keep up with.²⁵¹

'For the law to govern, the system through which it is administered must measure up adequately when mapped against the three dimensions of justice:

²⁴⁷ Shruthi Ramakrishnan, 'Sex offender registries don't work', *The Hindu* (online), 11 November 2017 <http://www.thehindu.com/opinion/op-ed/sex-offender-registries-dont-work/article17292629.ece>.

²⁴⁸ Yash Arya and Ayushi Chaturvedi, 'Analysis of Underreporting of Case of Child Sexual Abuse in India' [2017] *The World Journal on Juristic Polity* 2394.

²⁴⁹ *Ibid.*

²⁵⁰ Jayshree Bajoria, *India Sex Offenders' Registry Not the Answer* (17 April 2018) Human Rights Watch <https://www.hrw.org/news/2018/04/27/india-sex-offenders-registry-not-answer>.

²⁵¹ Above n 251.

substantive justice on merits; timeliness in the disposal of cases and; proportionate use of the State's resources.'²⁵²

Evidence that these dimensions are being satisfied in India is yet to be seen. Further, child sex abuse remains an epidemic in India. It is in this context that one needs to ask if a sex offender database, as proposed by the Indian Government, will deliver more justice and be more effective in deterring sex offending and recidivism than other legal mechanisms.

Besides, if India still decides to go ahead with Sex Offenders Registry, she needs to recognise the cost implications and may also have to take other measures alongside to ensure compliance from both the offenders and the states/Union Territories. This will require the expenditure of resources and international registry specialists to ensure that registry requirements are adhered to.

2.5 - CONCLUSION

Sexual offences, particularly those committed against children, provoke unremitting outrage and disgust within communities globally. The perpetrators of these crimes are generally perceived as incurably mentally-ill adults, and typically men. In response, members of society cry for greater justice and punishments that will be characterised by increased retribution, and function as significant deterrents. This moral panic influenced response is instinctual, but it is not necessarily justified.

This paper has discussed the implications, costs and effects of SORs. Sexual offender registries and their subsidiary components – community notification systems and movement restrictions – are mechanisms designed to increase public safety by assisting police and deterring sex crimes against children. In addressing the effectiveness of sexual offender registries it is necessary to appreciate that, each model is characterised by its own idiosyncratic context-dependant components as well as its underlying laws that define offences and punishments in its respective jurisdiction. Nevertheless, research indicates that rates of recidivism for convicted child sex offenders are already low. Furthermore, statistics from the US among other countries discussed in this report indicate that SORs have minimal effectiveness in reducing recidivism.

Alongside the limited benefits provided by SORs are the social and economic costs they have on registered offenders and their families, and the considerable financial costs of their implementation. Due to the stigmatisation of being on a registry, registered individuals and their families will often experience isolation from the

²⁵² Vrinda Bhandari, *India's Criminal Justice System: An Example of Justice Delayed, Justice Denied* (2018) First Post <https://www.firstpost.com/long-reads/indias-criminal-justice-system-an-example-of-justice-delayed-justice-denied-3475630.html>.

community and threats to their safety. Further, registered offenders face considerable hardship in obtaining and then maintaining meaningful employment, which creates financial hardship, often to be transferred onto their families. There is some evidence suggesting that these profound experiences of social and financial strain and difficulty, can spur a self-perpetuating cycle of recidivism, as registered offenders fail to rehabilitate and reintegrate into society. In addition, as is clearly demonstrated in the *Cost of Implementation* section of this paper, sexual offender registries are very expensive for governments to implement and then operate, weighing against any benefits they produce.

In addition, this report has highlighted the concern that many SORs have a scope that may objectively be too large. In some jurisdictions, particularly in the US, people can be registered for crimes that do not actually contain a sexual element, as well as for crimes without any criminal intent. Evidently this was an issue with Wisconsin's SOR, demonstrated in the case *State v Smith*. Furthermore, particularly concerning are those registered individuals convicted of child sex crimes for engaging in romantic under-age consenting sex.

The Indian Cabinet has recently approved the introduction of a national sex offender database. Based on this report, it is likely that such a database will generate similar issues to the SORs in other jurisdictions. As highlighted in this report, the Indian criminal justice system is overburdened; conviction rates are low and not yet convicted offenders line the prison cells. In addition, discrimination in in the criminal justice system and dispensation of justice, or rather punishment, continues to be an issue.

In concluding, this report suggests that the negative consequences of implementing SORs are not outweighed by the slight reduction in crime that they may bring about. The efficacy and justness of SOR implementation must be reviewed before introducing such measures.

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