



National Child Sex Offenders Registry (NCSOR)

Background

In light of the rising instances of sexual offences against children, a need for adequate safeguards to protect children from sexual offenders is necessary. The need for an effective mechanism for mandatory background verification of individuals working with children has been deemed necessary.ⁱ However, the absence of a mechanism for the public to access information necessary to conduct a background Verification, does not allow for such safety nets to be put in place. Easy Availability and access to Information about individuals who have 'unsupervised' access to Children can help parents/schools put in place safeguards, to prevent Child sexual offenders from gaining access to Children.

Rationale

This necessitates the setting up of a Centralised Government registry with information collated from different Jurisdictions about convicted Child abusers/sex offenders. This will not only help law enforcement agencies to track the location of convicted offenders, but can also help schools/ parents/ public to carry out background verification of individuals who have access to children either on their own or by requesting law enforcement agencies.

Registries in other countries: United States, United Kingdom, Canada.

United States of America

About the Act: The DruSjodin National Sex Offender Public Website (NSOPW), is a US government website coordinated by the Department of Justice, which provides state wise details of identity and location of Sex Offenders. Separate registry is also maintained by individual jurisdictions.ⁱⁱ It is pertinent to note, that the NSOPW was set up in 2005, in light of the kidnapping and murder of a 22 year old in North Dakota, by a sex offender registered in a different state.ⁱⁱⁱ This highlights the necessity for a centralized database that collates information about sex offenders from different Jurisdictions.

United Kingdom

About the Act: The United Kingdom has also introduced the National Child Sex Offender Disclosure Scheme(NCSOD).^{iv} The scheme allows parents, carers and guardians to formally ask the police to tell them if someone has a record for child sexual offences. Under the CSO Disclosure Scheme anyone can make an application about a person (subject) who has some form of contact with a child or children. This could include any third party such as a grandparent, neighbor or friend. This is to ensure any safeguarding concerns are thoroughly investigated. A third party making an application would not necessarily receive disclosure as a more appropriate person to receive disclosure may be a parent, guardian or carer. In the event that the subject has convictions for sexual offences against children, poses a risk of causing harm to the child concerned and disclosure is necessary to protect the child, there is a presumption that this information will be disclosed.^v However, it is pertinent to note that the guidance document for the NCSOD scheme has made it a point to distinguish its aim from the mechanism in the United States of America i.e

automatic public disclosure of details of Child Sex offenders to the general public, since this leads to Child Sex Offenders going underground and posing greater risk to Children.

A private website in United Kingdom^{vi} lists down details of convicted child abusers living in the United Kingdom and Ireland. The website claims to legally run under the data protection Act. However, the content of the website and their self-proclaimed intent to ‘name and shame’ abusers sensationalizes a sensitive issue and might even be counterproductive.

Canada

About the Act: Canada has enacted the *Sex Offender Information Registration Act – SOIRA*, and the National Sex Offender Registry database has been set up under the Act.^{vii} The Act provides for offenders convicted of designated sexual crimes and who receive a court order, to register with the National Sex Offender Registry (NSOR)^{viii} and to report annually to the Police.^{ix} It is pertinent to note that the *public does not have access* to the National Sex Offender Registry. Only Accredited police agencies in every province and territory are able to access the database either directly or indirectly through their Provincial/Territorial Sex Offender Registration Centre. Police in the various jurisdictions are responsible for inputting the data and the enforcement of the registration provisions. Access to personal information in the database is tightly controlled and used for police investigation purposes and as authorized by law.

Amendment to The Identification of Prisoners Act, 1920 by the State of Karnataka

The Identification of Prisoner Acts, 1920 (hereinafter referred to as ‘the Act’) authorizes the taking of measurements and photographs of convicts and others. Some states have made amendments to this Act. The State of Karnataka can consider making the following Amendments to this Act-

i. Section 3 currently reads as follows-

“Taking of measurements, etc., of convicted persons

Every person who has been, -

(a) Convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or

(b) Ordered to give security for his good behaviour under Section 118 of the Code of Criminal Procedure, 1898 (5 of 1898) ¹

Shall, if so required, allow his measurements and photograph to be taken by a Police Officer in the prescribed manner.”

The section could be amended as follows-

“3. Taking of measurements, etc., of convicted persons. -Every person who has been-

(a) Convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards or **of any offence punishable under the provision of The Protection of**

Children against Sexual Offences Act, 2012, or of any offence which would render him liable to enhanced punishment on a subsequent conviction. ^x

ii. **Section 4 of the Act reads as follows-**

“4. Taking of measurements, etc., of non-convicted persons.

Taking of measurements, etc., of non-convicted persons. Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner. “

Section 4 of the Act has been amended by the State of Karnataka as follows-

“In its application to the State of Karnataka, for Section 4 substitute the following:

“4. Taking of measurements or photographs of unconvicted persons. -Any person-

(a) Who has been arrested in connection with an offence punishable under Section 96 of the Karnataka Police Act, 1963, or in connection with an offence punishable of the Karnataka Police Act, 1963, or in connection with an offence punishable with rigorous imprisonment for a term of one year or upward or in connection with an offence for the commission of which on a second or subsequent occasion enhanced penalties have been provided for under any law for the time being in force; or

(b) In respect of whom direction or order under Section 54 or 55 of the Karnataka Police Act, 1963, has been made, shall if so required by a police officer, allow his measurements of photographs to be taken in the prescribed manner.

(i) After Section 4, insert the following:

“4-A. Taking of measurements, etc. of habitual offenders against whom restriction order is made. -Any person against whom an order of restriction has been made under the provisions of the Karnataka Habitual Offenders Act, 1961, shall if so required by a Police Officer, allow his measurements of photograph to the taken in be prescribed manner”.

[Karnataka Act 29 of 1975].

(ii) After Section 4-A as inserted in Karnataka insert the following the following:

“4-B. Taking of measurement, etc., of beggars under the Karnataka Prohibition of Beggary Act, 1975-Any person who has been arrested and not released under sub-section (2) of Section 11 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975) or against whom an order of detention has been made under sub-section (1) of Section 12 of the said Act, shall, if so required by an officer-in-charge of a receiving centre or relief centre allow his measurements and photographs to be taken in the prescribed manner.”

[Karnataka Act 1 of 1987].

The section could be amended as follows-

“4. Taking of measurements or photographs of unconvicted persons. -Any person-
(a) Who has been arrested in connection with an offence punishable under Section 96 of the Karnataka Police Act, 1963, or in connection with an offence punishable of the Karnataka Police Act, 1963, **or in connection with an offence punishable under the Protection of Children against Sexual Offences Act, 2012** or in connection with an offence punishable with rigorous imprisonment for a term of one year or upward or in connection with an offence for the commission of which on a second or subsequent occasion enhanced penalties have been provided for under any law for the time being in force; or.”

Issues that need to be further considered-

- i. Whether information regarding sex offenders should be freely available on the public domain or should information about child sex offenders be made available only to law enforcement agencies, which in turn can provide such information when requested for?
- ii. The mode of interstate sharing of information and the challenges that might arise in setting up of a centralized registry. Mechanisms of updating details for individuals convicted of sexual offences and biometric details required in the database and mode to track their location.
- iii. Under which legislation would the NCSOR be set up and will the registry merely have details of persons convicted under the Protection of Children from Sexual Offences Act, 2012.
- iv. Should the NCSOR be integrated with the Crime and Criminal Tracking Network Systems?
- v. What measures can be taken to reduce delay in the disposal of cases by the Special Courts or should cases under the Act be taken up by Fast Track Courts?

ⁱ Background verification for teachers in educational institutes is mandated in 50 states in the United States of America. New Jersey- Criminal History Review Unit in New Jersey; retrieved from <http://www.nj.gov/education/educators/crimhist/> on 03.09.2014, Department of Education, Pennsylvania- Background Checks; retrieved from http://www.portal.state.pa.us/portal/server.pt/community/background_checks/8623 on 03.09.2014

ⁱⁱ National Sex Offenders Public Website; <http://www.nsopw.gov/>

ⁱⁱⁱ About NSPW; retrieved from <http://www.nsopw.gov/en/Home/About> on 02.09.2014

^{iv} Find out if a person has a record of child sexual offences; retrieved from <https://www.gov.uk/find-out-if-a-person-has-a-record-for-child-sexual-offences> on 02.09.2014. The scheme is applicable in England and Wales.

^v The Child Sex Offender Disclosure Scheme Guidance Document; retrieved from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/184095/disclosure-scheme-guidance.pdf on 02.09.2014

^{vi} <http://ukpaedos-exposed.com/>

^{vii} Background: National Sex Offender Registry; <http://www.rcmp-grc.gc.ca/tops-opst/bs-sc/nsor-rnds/back-cont-eng.htm>

^{viii} Protecting Victims from Sex Offenders Act has provided for the automatic inclusion of convicted Sex Offenders in the Registry and also mandatory DNA sampling of convicted Sex Offenders; retrieved from <http://www.publicsafety.gc.ca/cnt/cntrng-crm/crrctns/protctn-gnst-hgh-rsk-ffndrs/ntnl-sx-ffndr-rgstr-eng.aspx>

^{ix} National Sex Offender Registry: Overview; retrieved from <http://www.rcmp-grc.gc.ca/tops-opst/bs-sc/nsor-rnds/index-eng.htm> on 03.09.2014. Note: Offenders are required to re-register annually and every time they change address or legal name.

^x The State of Maharashtra has made the following amendment to section 3 of the Act. “3. Taking of measurements, etc., of convicted persons. -Every person who has been-

(a) Convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards or of any offence punishable under Section 19 of the Dangerous Drugs Act, 1930, or of any offence which would render him liable to enhanced punishment on a subsequent conviction, or

(b) Ordered to give security for his good behaviour under Section 118 of the Code of Criminal Procedure, 1898, or under Section 93 of the Bombay Prohibition Act, 1949, or to give security for abstaining from commission of certain offences under Section 18 of the Dangerous Drugs Act, 1930.

Shall if so required allow his measurements and photographs to be taken by a police officer in the prescribed manner.” [Maharashtra Act 35 of 1970].