



Research Paper

The Legal Intricacies of Sexual Offenders' Register as A Deterrence Measure To Combat Rape

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Abstract

Globally, rape is acknowledged as an abhorrent and condemnable occurrence as it constitutes the highest demeaning and horrific treatment an individual can be exposed to in the hands of fellow human beings. Admittedly, the incidence of rape has not just begun. However, the recent hike in its rampancy coupled with the worrisome dimension of girl child defilement profoundly makes the menace scary. The development has therefore spurred government and non governmental bodies alike to evolve a number of drastic measures to frontally wrestle the ugly trend to a standstill. One of such measures by the government is the creation of register of convicted sexual offenders otherwise called black book of sexual offenders wherein the names of convicted sexual offenders are recorded with deterrence inclined intendment. In almost all jurisdictions of the world, hierarchy of courts which guarantees right of appeal to the citizenry against an unfavourable court verdict forms an integral part of the administration of justice system. The basic thrust of this work is to examine the deterrence quality of the register of convicted sexual offenders and the constitutionality of such registration when the convict has not fully exhausted his right of appeal against his conviction.

Keywords: Rape, Deterrence, Register, Appeal, Constitution and Shaming

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I. INTRODUCTION

Rape is indeed the most disgusting aspect of gender based violence to which the womenfolk is exposed to almost on daily basis. Female gender experiences rape not only during peace time but also during armed conflict when they become cheap sexual preys in the course of such crisis. More often than not, the victims are reluctant in reporting rape committed against them due to a variety of reasons such as fear of social stigma, fear of rejection, blaming and the fact that the police may be unwilling to prosecute owing to insufficient evidence among other pertinent reasons.

The causal factors of rape cases may be slightly different from jurisdiction to jurisdiction. While some factors may occur irrespective of jurisdiction concerned, some are geography specific. Identified as some of the factors responsible for rape cases include exposure to modernity through which adolescents are exposed to and watch various pornographic movies and porn. Arising from such exposure is the attendant thirst or desire to experiment on sex even if it means indulging in rape to actualize such desire.² Indecent dressing in women and girls which temptingly expose sensitive parts of their bodies to the opposite sex is yet another noticeable factor. Some males are morally weak and have insatiable penchant for anything in skirt. Hence, whenever they are exposed to delicate parts of the female body through indecent dressing, they can hardly think straight anymore and are instantly overwhelmed by the lust for sex with such female at all cost including by means of rape.³ It is noteworthy to stress that what is regarded as indecent dressing is a relative term in that what in African setting constitutes indecent dressing may be an acceptable vogue in some other climes.

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²Gberindyeri G.G (2010), Singles and See: discovering biblical and practical principles that will help you, Jalingo: Dan-Kaduna Printers.

³Diara, B.C.D and Nwezr. S.N. (2021) . Saint Paul and the concept to sexual immorality in Journal of Bible Exposition, Vol. 1 No1 Pp. 100-113

Poverty and economic factor especially in poor or developing countries has equally been identified as a causal factor of rape. Due to the harsh economic situation, many families are constrained to send out their female children hawking goods to eke a living for the families and in the course of which they fall victims of miscreants who take advantage of such exposure to sexually abuse them.⁴ Declining moral value, poor parenting and illicit consumption of hard drugs are other factors responsible for incidence of rape cases. Several rape cases have been committed by sexual offenders under the influence of illicit drug consumption. This underscores the interconnectivity between drugs and crime. In the recent time, there is an upsurge of rape cases of young girls by internet fraudsters otherwise called yahoo boys who are reportedly defiling young girls and use handkerchief to collect their semen which they use for money ritual purpose all in their desperation for quick wealth.

One of the measures put in place in some jurisdictions, Nigeria inclusive, to combat the hike in rape cases is the creation of register of sexual offenders otherwise called black book wherein the names of convicted sexual offenders are listed and made accessible to members of the public. Generally, where a person is tried through a judicial process and convicted for a crime, his convict status is deemed to be a matter of public knowledge. The imperativeness of the register of sexual offenders is therefore to create special and widespread awareness of the convict status of the sexual offenders and for the purposes of imposing certain legal restrictions on them to curtail the possibility of a reoffend of sexual offence against unsuspecting members of the public. Aside from the foregoing, creation of sexual offender register is to serve as deterrence to other like minds in the society as no sane and responsible citizen would fancy his name in the permanent criminal record of convicted sexual offenders.

Register of Convicted Sexual Offenders in Nigeria

The Violence Against Persons (Prohibition) Act⁵ provides for the establishment of register of convicted sexual offenders in Nigeria⁶ However, the Act is only applicable in the Federal Capital Territory, Abuja with jurisdiction to try offences under the Act solely given to the High Court of the Federal Territory, Abuja.⁷

Some States in Nigeria, such as Lagos and Ekiti States have subsequently domesticated the Act consequent upon which they created register of convicted sexual offenders in their respective States. For instance, the Ekiti State Government enacted the Gender Based Violence (Prohibition) Law in 2019 wherein it created register of convicted sexual offenders in the State⁸

It is noteworthy to stress at this juncture that the Violence Against Persons (Prohibition) Act and its replicated version in Ekiti State deal with variety of topical issues aside from sexual offences. However, for the purposes of this work, efforts would be concentrated on the relevant sexual offences in both enactments as they particularly relate to rape.

The Act, in providing for the offence of rape states⁹
A person commits the offence of rape if-

- (a) he or she intentionally penetrates the vagina anus or mouth of another person with any other part of his or her body or anything else;
- (b) the other person does not consent to the penetration, or
- (c) the consent is obtained by force or means of threat or intimidation of any kind or by fair of harm or by means of false and fraudulent representation as to the nature of the act or the use of any substance or additive capable of taking away the will of such person or in the case of a married person by impersonating his or her spouse.

A person convicted for the offence of rape is liable to life imprisonment except in the following circumstances.¹⁰

- (a) Where the offender is less than 14 years of age, he will be liable to a maximum of 14 years imprisonment.

⁴See (<http://www.grassrootsvanguard.com/2011/11>)

⁵Enacted by the Nigerian Government in 2015

⁶Section 1(4) of the Act

⁷Section 27 of the Act

⁸Section 2(4) of the Law

⁹Section 1(1) of the Act

¹⁰Section 1(2) of the Act:

(b) In all other cases, the offender will be liable to a minimum of 12 years imprisonment without an option of fine or

(c) In the case of rape by a group of persons, the offenders are liable jointly to a minimum of 20 years without an option of fine.¹¹

It would seem that an offender of less than 14 years of age may be convicted with an option of fine as the Act does not explicitly exclude option of fine for such category of offender as it does in relation to other categories of offenders. Another salient provision of the Act is the power of the court to award compensation to the rape victim as it may deem fit in the circumstance.¹² A register for convicted sexual offenders is also created under the Act and same is to be maintained and made accessible to members of the public.¹³

The relevant provisions of the Ekiti State domesticated Gender Based Violence (Prohibition) Law on rape are a verbatim reproduction of the provisions of the above Act save that the register of the convicted sexual offenders is to be maintained by the Attorney General and Commissioner for Justice in the State while the Act is silent on who is to maintain such register.

Shaming Policy Measures

Recently, the Ekiti State Government embarked on a new approach called shaming of sexual offenders as additional measures to curb the scourge of sexual violence in the State. These measures are basically in response to the zero tolerance for all forms of violence against Women and Children in the State.¹⁴ The measures include the aggressive prosecution of sex offenders and the disqualification of offenders from benefitting from prerogative of mercy exercisable by the Governor.¹⁵ Other measures which are essentially in form of community notification of the convict status of the sexual offenders include:

1. Taking and pasting the photographs of convicted sex offenders in prominent public spaces in their communities and their Local Government Headquarters;
2. Issuing an advisory to the traditional ruler of the sex offender's community on the status of the offender;
3. Uploading the sex offenders photograph on the website of the Ministry of Justice;
4. Showing photographs of sex offenders on Ekiti State Broadcasting Service and announcing their names on Radio Stations in the State;
5. Compulsory psychiatric tests for all persons of whom the Director of Public Prosecution (DPP) has issued 'a case to answer' Legal Advice for the offence of child defilement. This also **includes persons currently standing trial for the offence of child defilement**

The shaming policy measures by the Ekiti State however remain a mere policy innovation as there is no legal framework to back same. The absence of statutory or legal foundation upon which the measures are based, poses a serious dilemma to the legality of the operation of the policy measures. In other words, subjecting a sexual offender to all the treatments highlighted under the shaming mechanism without the backing of any extant law is itself curious and legally untenable as two wrongs can never make a right.

The policy is further enmeshed in deeper legal crisis as it applies to an alleged sexual offender who is yet to be found and pronounced guilty by the court of law as it provides for compulsory psychiatric tests for all persons of

¹¹Section 2(2) of the Law

¹²Section 1(3) of the Act

¹³ Section 1(4) of the Act

¹⁴Available at <https://moj.ekitistate.gov.ng/news/eksg-to-shame-sexual-offenders-publish-names-pix-on-govt-website/> accessed 2nd December 2020.

¹⁵By virtue of the provision of Section 212 (1) of the Nigerian 1999 Constitution as amended, the Governor of the State is empowered to grant any person concerned with or convicted of any offence created by any Law of a State a pardon, either free or subject to lawful condition, grant to any person a respite, either for an indefinite or for a specified period, of the execution of any punishment imposed on that person for such an offence, substitute a less severe form of punishment for any punishment imposed on that person for such an offence or remit the whole or any part of any punishment imposed on that person for such an offence or of any penalty or forfeiture otherwise due to the State on account of such an offence.

whom the Director of Public Prosecution (DPP) has issued 'a case to answer' Legal Advice for the offence of child defilement which also includes persons currently standing trial for the offence of child defilement

It is to be observed here that the issuance of legal advice by the office of the Director of Public Prosecutions is not tantamount to proof beyond reasonable doubt required in every criminal trial. Rather, it merely connotes that there is a prima facie case for the sexual offender to stand trial where his guilt or innocence will be determined. It is a universally acknowledged principle of law that a person alleged of committing a crime is presumed innocent until otherwise proven guilty by a court of competent jurisdiction.¹⁶ Therefore, the idea of subjecting an alleged sex offender to psychiatric tests when his culpability has not been established is preemptory and prejudicial to the right to fair hearing of such an alleged offender.¹⁷

Constitutional Right of Appeal of Sexual Offenders

The right of the citizens to appeal against an unfavourable verdict is constitutionally bestowed and thereby sacrosanct. On the constitutional right of appeal, the Supreme Court of Nigeria in OTTI v. OGAH¹⁸ held thus:

By Sections 241 (1) 244 (2) and 245 (1) of the constitution of the Federal Republic of Nigeria 1999 (as amended) every citizen of Nigeria has the right to approach a higher court to exercise his right of appeal as provide... It is the glory happiness and pride of Nigeria's various constitutions that to prevent any injustice no man is to be concluded by the first judgment, but that if he apprehends himself to be aggrieved, he had another court to which he can resort to for relief. For this purpose, the law furnishes him with the right of appeal as of right. If there is no appeal at all, it is possible the system would be intolerable. The doors of the appellate courts have to be kept open if right and freedom are to be preserved.

This right extends to both civil and criminal verdicts delivered by the court. The existence of hierarchy of courts in the administration of justice system is an affirmation of the citizens' right of appeal against a decision which they consider unsatisfactory to them.¹⁹ It follows therefore, that a sexual offender who has been found guilty by the trial court may decide to appeal against such decision of the trial court to the appellate court.

However, the worrisome trend in the Nigerian environment is the hasty practice where government immediately proceeds to register the name of the sexual offenders in the black book and subject him to all manners of shaming measures as soon as the trial court gives its verdict even without waiting for the expiration of the period of filing notice of appeal. A statutory period to file an appeal against decision of the court where a person is dissatisfied with such judgment is usually prescribed by the relevant statutes.

Any registration of convicted sexual offender and or shaming measures embarked upon by the government when the right to file an appeal still subsists will certainly be premature and prejudicial to the offender's constitutional right of appeal. This therefore underscores the imperativeness of exhaustion of period of appeal before enlisting the name of the sex offender in the register of sexual offenders. The various statutes governing register of offenders in Nigeria fatally created a yawning gap as to the remedial measures to explore to clean off the already dented image of the registered sex offender in the event that his appeal succeeds and his initial conviction is set aside.

¹⁶See Section 36 (5) of the Nigerian 1999 Constitution as amended, In Commissioner of Police vs. Tobin (2009) ALL FWLR (Pt. 483) 1302 at 1310 the Court held that: It is indeed a trite principle that no court of law worth its sail derives any joy from seeing or allowing offenders escape the penalty they richly deserve. However, until such offenders are duly proved guilty beyond any doubt under the appropriate law, by a court of competent jurisdiction they should be entitled to walk about in the street, tread the Nigerian soil and of course breath the Nigerian air as free and innocent citizens of this God's own country, Nigeria The above position was reiterated in Ibori vs. Federal Republic of Nigeria (2009) ALL FWLR (Pt. 488) 285 at 288 when the Court held that: In this country-Nigeria, we operate a system which recognizes provision. Thus, no matter how seemingly serious, grave, heinous or unconscionable an alleged offence or offences committed by an accused person might look, he is still entitled to that presumption as an article of faith and a matter of right guaranteed by the Constitution. Equally in Nwaigwe vs. Federal Republic of Nigeria (2009) ALL FWLR (Pt. 485) 1702 at 1724 paras A- D the Court held thus: The right of every person charged with a criminal offence to be presumed innocent is a fundamental one enshrined under section 36(5) of the 1999 Constitution. It is only after full trial and conviction following proof beyond reasonable doubt that the accused committed the alleged offence or offences that the presumption of innocence may stand reversed.

¹⁷In Ogene v. Ogene (2008) All FWLR (Pt. 403) 1326 at 1338 paras E-F the court held thus: Adjudicatory justice has its foundation in the concept of fair hearing as the fairness of a trial can be tested by the maxim audi alteram partem. See also Section 36 (1) and (4) of the Nigerian 1999 Constitution as amended,

¹⁸2017 All FWLR (Pt. 886) Pg. 2075 at 2108 paras. C-D

¹⁹Chapter Vii part 1 1999 Constitution of the Federal Republic of Nigeria as amended

Register of Convicted Sexual Offenders in the United States

In the United States of America, sexual assault is alarming as elsewhere. Annually, an estimated 300,000 women are raped²⁰ and 3.7 million are confronted with unwanted sexual activity. Approximately 900,000 children are also maltreated each year while 9% are sexually abused.²¹ One of the measures put in place by the government to combat rape is Wetterling Act²² which made it mandatory for convicted sexual offenders to register and verify their current names and addresses with local police. The Act was later amended to pave way for Megan's Law²³ under which states were required to establish system for making registry information available to the public through methods of community notification. Through this approach, photographs, names and addresses of registered sexual offenders are available to the public via the internet and other forms of community notification.

Adam Walsh Protection Act otherwise called AWA²⁴ was later put in place in response to the vicious attacks by violent predators against children. The Act provides for streamlining the tracking of sexual offenders and notification of requirement at the Federal level.

Some of the specific provisions of AWA include but not limited to the following:

- (i) Making kidnapping and false imprisonment of a child, regardless of sexual intent, a registerable sexual offence
- (ii) Requiring registered sex offenders to register in any jurisdiction, not only where they live, but also where they work or attend school
- (iii) Requiring registered sex offenders to verify their addresses once per year
- (iv) Making failure to register a felony offence punishable by a maximum of 10 years in prison.
- (v) Giving a registered sex offender 3 days to report a change of address to law enforcement agencies.
- (vi) Requiring that registered sex offenders' entire criminal history, not just the sexual offence, finger prints and a DNA sample be reported to law enforcement agencies.
- (vii) Mandating that the registry be made available on the Internet and be subject to such community notification.
- (viii) Mandating the length of time a registered sexual offender would be required to register.

The Consequences of Registration of Sexual Offenders under AWA

The registration of sexual offenders under the Act has a number of sweeping implications. Aside from the adverse consequences which registered sexual offenders may experience on the account of his status, the community and the immediate family member of the offenders may likely experience some discomfort too. Registered sexual offenders often face integration constraint on the account of their status. The integration constraint may manifest in limited access to housing, education and employment. They may equally be exposed to community segregation and harassment which could precipitate them to commit additional crimes including sexual offence.²⁵ Some of these consequences are here considered in fuller details.

Community Effect

The presence of registered sexual offender in the neighbourhood may orchestrate sustained fear and apprehension for the residents. For example, when members of a rural community in New York were notified of the presence of two registered sexual offenders in the community, they reacted by posting various warning signs such as *monsters live here*. Aside from posting several trepidation signs, the community embarked on protest through the media and prevailed on the landlords of the registered sexual offenders to evict them from the

²⁰Kelly K. Bonnar-Kidd sexual offender Laws and Prevention

²¹Ibid

²²Pub L No. 103-322 (1990)

²³Pub L No. 104-145 (1996)

²⁴Pub L No. 109-248 (2007)

²⁵Tofte S. Sex offender laws do more harm than good. Available at: <http://hrw.org/reports/2007/us0907>. Accessed December 3, 2009

community. The apprehensive mood of the residents of the community was aptly captured through the postings by two of its members which expressed thus:

Since, I explained to my daughters about the monsters across the street, I have seen fear and terror in their faces and they sometimes refuse to sleep alone²⁶

Another post reads thus:

I have slept approximately a combined 5hours in the past 3nights because I wake up in a panic and I need to get up and make sure that my children are okay²⁷

Effect on Relatives of the Sexual Offenders

The registered sexual offenders are not the sole bearers of the fall- out of their criminal indulgence but inclusive of their family members who are adversely affected as a result of registration, community notification and residency restrictions. The stigma of the status of registered sexual offender of a family member constitutes emotional distress to the rest of the family members²⁸

Educational Barrier

A registered sexual offender may suffer educational hindrance. For instance, under the Campus Sex Crime Prevention Act²⁹ all institutions were required to monitor registered sexual offenders who had registered in their schools. In the process, many institutions were constrained to place additional admissions restrictions on registered sexual offenders. Equally, in Eastern Oregon University, registered sex offenders can be denied admission if their coursework requires them to have close contact with an individual in a private setting³⁰

The State University of New York mandated sexual offenders who have applied for admission to go before a committee to explain their crimes and describe the measures they have taken to ensure rehabilitation. Where the explanation offered fell below expectation and the committee perceives that the risk from their admission is high to the campus community, they may be denied admission. Where admission is offered to any registered sexual offender, the campus police must take measure to notify the campus community including posting the information on a Website, contacting classmates and professors and posting flyers around campus.³¹

Residency Restriction Effect

Registered sexual offenders often experience residency restriction in the belief that they are at a high risk for reoffend. Many States in the United States had passed residency laws to restrict registered sexual offenders from living within a certain number of feet from schools, day-care centers and churches.³² In some cases, residency restriction could be so drastic as to banish a registered sexual offender from living anywhere in the city. For instance, in Miami, Florida residency restrictions were so harsh as to restrain registered sexual offenders 2500 feet from schools, playgrounds, licensed day-care centers and parks.³³ Indeed, the only location registered sexual offenders' probation officers would approve for housing was underneath the Julia Tuttle Causeway which is a bridge connecting Miami Beach to Miami³⁴ It is to be noted that the policy of residency restrictions is a potential danger area as it may constitute an infraction to the fundamental human rights of the registered sexual offenders especially where same is retroactively applied to restrict those who are already living in certain community before they become registered sexual offenders.

²⁶MrGrath M. Neighbours irate over sex offenders. *Watertown Daily Times* July 13, 2007: B1 (Google Scholar)

²⁷*North Country This Week* Letter to the editor. Available at: www.northcountrynow.com. Accessed December 3, 2009

²⁸Levenson J.S, Cotter L.P. The effect of Megan'sk Law on sex offender reintegration. *J Contemp Crim Justice* 2005;21(1):49-66 [Google Scholar]

²⁹Pub L No. 106-386

³⁰Eastern Oregon University Sex offender protocol and statement: protocol for handling sex offenders. Available at: <http://www.eou.edu/saffairs/handbook/offend.html>. Accessed December 3, 2009

³¹State University of New York Campus security policy and campus crime statistics reporting. Available at: http://www.suny.edu/sunypp/documents.cfm?doc_id=447. Accessed December 3, 2009

³²California Attorney General Sex offenders, sexually violent predators: punishment, residency restrictions, and monitoring. Available at: http://www.sos.ca.gov/elections/vig_06/general_06/pdf/proposition_83/entire_prop83.pdf. Accessed December 3, 2009

³³Zarella J, Oppmann P. Florida housing sex offenders under bridge. Available at: <http://www.cnn.com/2007/LAW/04/05/bridge.sex.offenders/index.html>. Accessed December 3, 2009

³⁴Ibid

Employment Effect

Employment opportunity could be difficult to come by for registered sexual offenders as it is customary of some employers to conduct a check on the background of their prospective employees before giving them a job offer. Where it is discovered that a prospective employee has criminal record, this may serve as a caution signal to the employers not to engage such an individual and thereby deprive him means of livelihood³⁵ Employees may be relieved even from their long term employment when their status as registered sexual offenders become public as a result of community notification³⁶ In some states, laws mandate that employer information be included as part of any community notification and this may ultimately serve as a deterrent to employment.

Register of Convicted Sexual Offenders in the United Kingdom

The registration of sex offenders in the UK was introduced in the Sex Offenders Act 1997.³⁷ The 1997 Act established that offenders convicted of certain sexual offences would have to notify certain personal details to the police and any subsequent changes to these details³⁸

The Act was however amended in 2000 introducing a number of changes to strengthen the requirements on convicted sexual offenders. Some of the changes include the increase in maximum penalty for a breach of the notification requirements to five years imprisonment and sexual offenders had to make their initial notification within three days as opposed to 14 days of their conviction, caution, finding, etc. for a relevant sexual offence contained in the 1997 Act. Besides, the 2000 amendment introduced a requirement for registered sexual offenders to notify the police if they intended to travel overseas for eight days or more.

In 2003, the Act was again amended³⁹ and provided new definitions for sexual offences, penalties and arrangements to protect the public. Some of the innovations introduced by the Sexual Offences Act 2003 are herein considered.

New Civil Preventative Orders

Aside from reintroduction of most of the provisions on registration with some improvements the Act, contained a new notification order which can be made on application by a chief officer of police in respect of individuals who have been convicted abroad of sexual offences equivalent to the sexual offences listed in Schedule 3 of the 2003 Act.⁴⁰ The effect of the order is to make such offenders subject to the notification requirements of the 2003 Act as if they had been convicted in the UK of a relevant offence.

Included under the new civil preventative order, is the foreign travel order which will enable the courts in certain circumstances and on application of a chief officer of police, to prohibit those convicted of sexual offences against children aged under 16 from travelling overseas where there is evidence that they intend to cause serious sexual harm to children in a foreign country.

Notification Requirements

The Act strengthened registration requirements by introducing some changes into notification requirements. The notification requirements of sexual offenders convicted pursuant to Part 2 of the Sexual Offences Act 2003 are now automatic requirements for offenders who receive a conviction, caution or finding for certain sexual offences. This notification requirements do not constitute punishment for a sexual offence neither are they part of the system of penalties.

The notification requirements are also not dependent on an order of the court. An offender who becomes subject to the requirements does so because he has been convicted, cautioned etc. for a "relevant offence." The period an offender is expected to comply with the notification requirements is stated in the Act and same is not dependent on the discretion of the court or the police but rather is based upon whether the offender has a caution, conviction or finding made in respect of a relevant offence and the type and duration of the sentence disposal received⁴¹

³⁵Holzer HJ, Raphael S, Stoll MA. Employment barriers facing ex-offenders. Available at: http://www.urban.org/UploadedPDF/410855_holzer.pdf. Accessed December 3, 2009

³⁶Welchans S. Megan's Law: evaluations of sexual offender registries. *Crim Justice Policy Rev* 2005;16(2):123-140 [Google Scholar]

³⁷David M. The requirements for notification by sexual offenders in England and Wales

³⁸The Sex Offenders Act was implemented on 1 September 1997.

³⁹Sexual Offences Act 2003

⁴⁰Ibid

⁴¹Section 82 If the offender is sentenced to 30 months or more imprisonment (inc. life), he has an indefinite period to comply with notification requirements ditto if he is admitted to a hospital subject to a restriction order, he has 10years if he is sentenced to 6 months or more (but less than 30 months) imprisonment, if he is sentenced to less than 6 months imprisonment, he has 7years ditto if he is admitted to hospital without a restriction order, if he is cautioned, he has 2years, if

Under the Act, the persons who are subject of the notification requirements include⁴² people convicted of an offence listed in Schedule 3 of the Act which exclusively are sexual offences and people found not guilty by reason of insanity of such an offence. It is noteworthy to stress that the notification requirements extend to the whole of the UK. The details which the offender must notify to the police upon initial notification are set out in the Act.⁴³

The offender is required to must make his initial notification within three days of his release from custody, release from imprisonment or service detention, released from hospital or, return to the United Kingdom. The Act equally provides for the necessity of registered sexual offender to notify the police of changes of details of his initial notification within three days. Such changes may become imperative on the account of using a name that he has not already notified to the police, a change to his home address, having stayed at an address in the UK that he has not notified for a qualifying period as one or more periods amounting to seven days during any twelve month period, his release from detention in a prison, hospital, etc. When offenders make such a notification, they must also re-confirm the other details they are required to provide at initial notification.

Periodic Notification

Aside from notification in respect of changes to notified details, registered sexual offenders are to periodically re-notify the details required of them on initial notification within 12 months of the last time he/she was required to notify. This is a measure to prevent registered sexual offenders to evade the notification requirements. The requirement of periodic notification may be suspended while offenders are overseas on holiday, for business trip, in prison or in hospital. Upon his return to UK, he must within three days comply with the periodic notification requirements.⁴⁴

Failure to observe notification requirements without reasonable excuse is an offence under the Act.⁴⁵ A reasonable excuse for failing to comply with the notification requirements could be where the offender is in hospital. Notification breach may occur where the offender fails to make an initial notification⁴⁶ notify a change of details⁴⁷ make an annual re-notification,⁴⁸ comply with any requirement imposed by regulations concerned with the notification of foreign travel,⁴⁹ notify the fact that a change did not happen as predicted when it had been notified in advance,⁵⁰ allow a police officer to take his photograph or fingerprints⁵¹ ensure that a young offender on whose behalf he is required by a parental direction to comply with the notification requirements attends a police station when a notification is made.⁵² A breach will be deemed to have occurred where an offender knowingly provides false information.

A registered sexual offender who wishes to travel outside UK is expected to notify the police.⁵³ The purpose of requiring offenders to notify the police of their intention to travel abroad is twofold. First, it enables local police to know the whereabouts of serious sexual offenders and in doing so, avoids sexual offenders claiming that they have not complied with the notification requirements of the Act because they were overseas.

he is given a conditional discharge, he has the duration of the conditional discharge and if he received any other disposal (such as a community punishment or fine), he has 5years.

⁴²Section 80

⁴³Section 83 These are his date of birth, national insurance number, name, any other names used, his home address (this means the offenders sole or main residence in the UK, or where the offender has no such residence, the location of a place in the UK where he can regularly be found and if there is more than one such place, such one of those places as the person may select.) the address on any other premises in the UK which, at the time of notification, he regularly resides or stays.

⁴⁴Ibid

⁴⁵Section 91

⁴⁶Section 83 (1)

⁴⁷Section 84(1)

⁴⁸Section 85(1)

⁴⁹Section 86(1)

⁵⁰Section 84(4)(b)

⁵¹Section 87(4)

⁵²Section 89(2)(b)

⁵³Section 86. The requirements do not prohibit an offender from traveling overseas - this is covered by foreign travel orders. It is important to note that the Sexual Offences Act 2003 makes no changes to existing police powers relevant to the exchange of information but that the information provided by the foreign travel notification requirements assist the police in making sensible judgments about whether to pass information about the risk an offender poses to other jurisdictions in order to prevent an offence from being committed overseas. The required information to be provided by the offender at a prescribed police station include the date of departure from UK, the destination country(or , if there is more than one, the first), the point of arrival in that country, his point(s) of arrival in any countries he will be visiting in addition to the initial destination, the carrier(s) he intends to use and return to the UK or any other point(s) of arrival while he is outside the United Kingdom(but not internal flights, details of his accommodation arrangements for his first night outside the United Kingdom, his date of re-entry to the United Kingdom and his point of arrival on his return to the United Kingdom.

Second, it enables the police, where appropriate, to inform other jurisdictions that a sexual offender is intending to visit their country.

Where the offender has made a notification but the information notified has become inaccurate or incomplete statement of the information required any time up to 24 hours before his departure from the United Kingdom, he must report in person and make a fresh notice to the Police of his intentions no later than 24 hours before his departure.

Where an offender does not hold the required information seven days prior to his intended departure date from the United Kingdom probably due to the urgency involved in the departure, he must notify the police either within 24 hours of the information becoming available or 24 hours prior to his departure, whichever is the earlier.

An offender who has given notice of his intention to leave the United Kingdom as described above must, within three days of his return to the United Kingdom, report in person to a prescribed police station and notify the police of the date of his return and his point of arrival in the UK. However, an offender will not have to notify the police of his return if, on notifying his intention to depart the United Kingdom, he provided details of his expected date and point of re-entry to the United Kingdom and then returned as stated.

It should be noted that a relevant offender cannot be prevented from travelling simply because he does not hold the range of information specified. The legislation is not intended for this purpose. An offender is, however, in breach of the requirements of the legislation where he holds the relevant information and fails without reasonable cause to disclose it. In situations where notified information changes for reasons beyond his control, for example, his accommodation arrangements are altered by the travel company on his arrival, this would not constitute a failure to meet the requirements of the Act. Failure to notify foreign travel or make a false notification is an offence, punishable by up to five years imprisonment.⁵⁴

The Act does not spare juvenile sexual offenders as they are also subject to the notification requirements but only when they have committed the most serious sexual offences. Therefore, for juvenile offenders, sentence thresholds have been introduced in the Act.⁵⁵ The effect of these thresholds is that a juvenile offender (i.e. an offender aged under 18) only becomes subject to the notification requirements if they receive a custodial sentence of 12 months or more in respect of certain offences. This excludes completely offenders under 12 and will mean that final warnings, reprimands, community sentences and periods of detention of less than 12 months given for these offences to juvenile offenders will not lead to registration.

For the most serious offences in Schedule 3 there is no sentence threshold to registration for juvenile offenders and adult offenders alike and the notification requirements will apply to juvenile offenders who receive a final warning or reprimand and for those convicted in court, regardless of the disposal that is given. The serious offences in this category include rape⁵⁶ assault by penetration⁵⁷ causing sexual activity without consent⁵⁸ rape of a child under 13⁵⁹ sexual assault of a child under 13 by penetration⁶⁰ offences against persons with a mental disorder⁶¹ and administering a substance with intent⁶²

The Act envisaged a situation where a juvenile offender may have incapacitation to comply with the notification requirements. Hence, it provides for parental direction⁶³ which empowers the court to direct that a person with parental responsibility for a juvenile offender should comply with the notification requirements on behalf of the juvenile offender. The effect of a direction under this section will be that the notification requirements that would otherwise have fallen on the juvenile offender will instead fall upon the parent or, in some cases, the local authority. The parent must ensure that the juvenile offender attends the police station with him when making a notification.

Parental directions do not require the consent of the parent but the courts may wish to seek the views of the parent prior to making such an order. Failure on the part of the parents to ensure that the juvenile offender complies with notification requirements will not amount to an offence where such parents have made the best of efforts to ensure compliance without success in which case it can be safely concluded that the parents have reasonable excuse for non-compliance. A person subject to the notification requirements only commits an

⁵⁴ Ibid

⁵⁵ Schedule 3 Part 1 of the 2003 Act.

⁵⁶ Section 1 Schedule 3

⁵⁷ Section 2 Schedule 3

⁵⁸ Section 4 Schedule 3

⁵⁹ Section 5 Schedule 3

⁶⁰ Section 6 Schedule 3

⁶¹ Sections 31 to 38 Schedule 3

⁶² Section 61 Schedule 3

⁶³ Section 89

offence if he breaches the requirements “without reasonable excuse.”⁶⁴ However, where there is a deliberate breach by a parent of a parental direction, such parent would be prosecuted and sentence to maximum of five years terms of imprisonment upon conviction.

Notification Orders of Sexual Offenders Convicted Outside UK

The scope of the Act is not restricted to sexual offences committed in the UK but extends to sexual offenders whether of British national or foreign national who resides in the UK or who has a right to remain in the UK. The thrust of the notification order is to protect the public in the UK from the risks posed by sexual offenders who either have been convicted, cautioned, etc for sexual offences abroad. Just like the sexual offenders convicted in UK are expected to comply with notification requirements, sexual offenders convicted abroad are subject to the notification requirement⁶⁵ as if they have been convicted, cautioned, etc in the UK. A breach by offender to comply with the notification order would be treated as any other offender subject to the notification requirements for an offence committed in the UK.

Register of Sexual Offender as a Deterrence to Curb Rape

While register of sexual offences may have several purposes to serve, it is certainly not in doubt that one of such purposes is deterrence inclined. Proponents of deterrence doctrine⁶⁶ believe that people choose to obey or violate the law after calculating the gains and consequences of their action; hence, they would not commit crime if the cost of committing crime outweighs the benefits of such criminal indulgence. In its strict construction, deterrence is the prevention of socially undesirable behaviour by fear of punishment. Thus, a person who might otherwise have committed a crime is restrained by the thought of detection, trial, conviction and sentence and all other unpleasant consequences that may attend his wrongdoing. The basic phenomenon therefore is the fear of punishment. This fear may be influenced by the experience of punishment. When an offender has been punished, he knows what it is like to be prosecuted and punished and this may strengthen his fear of the law.

Deterrence may be classified into two ways as general and specific deterrence.⁶⁷ General deterrence is designed to prevent crime in the general population and not individual focused. Thus, the state's punishment of offenders serves as an example for others in the general population who has not yet participated in criminal events. It is meant to make them aware of the horrors of official sanctions in order to put them off committing crimes. Examples include the application of the death penalty and the use of corporal punishment.⁶⁸ On the other hand, specific deterrence is designed to deter only the individual offender from committing that crime in the future. Advocates of specific deterrence believe that punishing offenders severely will make them unwilling to reoffend in the future⁶⁹.

Contrary to the provision contained in part 2 of the Sexual Offences Act of UK that the notification requirements to be made by the registered sexual offenders do not constitute punishment or form part of the system of penalties cannot be correct in view of the implications of such notification requirements.

⁶⁴Section 91(a). A reasonable excuse may include (although it is for the court to decide) a situation where the parent has made every effort to ensure the juvenile offender attends at the police station but is unable to do so.

⁶⁵Part 2 of the Sexual Offences Act 2003

⁶⁶Ihekwoaba D, Onwudiwe, et al Deterrence Theory marisluste.files.wordpress.com/2020/211 deterrence-theory. The early classical philosophers of deterrence such as Thomas Hobbes anchored the evolution of deterrence theory of punishment to the emergence of social contract where individuals agree to give up their egocentricity and enter into a social contract with the; government so that it will protect them from human predicaments such as war, conflict and crime. By the implication of submission to social contract, the government as the sovereign is vested with coercive power to ensure the sanctity and workability of the social contract by punishing deviant behaviour that can detract from its real essence. Deterrence is thus the reason individuals are punished for violating the social contract and it serves to maintain the agreement between the state and the people. Cesare Beccaria while espousing the frontier of social contract as the basis of deterrence theory opined that people are rationally self-interested hence they will not commit crimes if the cost of committing crime outweighs the benefits of such criminal indulgence. Excessive severity will not reduce crime but will rather aggravate it. Thus, to have a deterrent value, punishment must be proportionate to the crime committed. Pleasure and pain are the motives of rational people and to prevent crime, the pain of punishment must transcend the pleasure received from committing crime. In his own view, Jeremy Bentham believed that the object of the law is to widen the happiness of the people by increasing the pleasure and lessening the pain of the community. Therefore, punishment in excess of what is essential to deter people from violating the law is unjustified. The duty of the state under the social contract according to Bentham is to promote the happiness of the society by punishing erring behaviour and rewarding good deed. The seriousness of any crime should be based on the extent of harm done to the society..

⁶⁷Deterrence the concept law.jrank.org/papers/955/Deterrence-concept.htm accessed

⁶⁸Deterrence: The Concept; law.jrank.org/pages/955/Deterrence-concept.html. Accessed 17/04/2021

⁶⁹Ibid

It is imperative to note that the register of sexual offenders is a post-conviction development. It therefore follows that a sexual offender becomes registrable after he must have been convicted and sentenced under the relevant law governing rape in the affected jurisdiction. Ordinarily, a sex convict who has served the appropriate sanction prescribed for his wrongdoing should be let off the hook to continue his life save for the jurisdictions or instances where life imprisonment is stipulated for the offence of rape.

By its practical application, the register of sexual offenders constitutes an infringement to the free exercise or enjoyment of certain rights by the sex convict. Ordinarily, an individual who has not committed any infraction of the law should be able to freely exercise and enjoy his freedom of association and movement among other rights. Undoubtedly, any interference or impediment to the unfettered enjoyment of one's rights on the account of past wrong doing is certainly a form of punishment and every form of punishment has deterring quality.

A registered sex convict can be completely denied the exercise of some of his fundamental rights as exemplified by the various implications of registered sexual offenders in the United States of America under AWA and Sexual Offences Act 2003 in the United Kingdom earlier considered in this work. In the instances where the rights of the registered sexual offender are not diametrically denied him, the exercise and enjoyment of such rights may be on restricted basis or upon the fulfillment of certain conditionalities to which other free members of the society are not exposed to in the exercise of their rights.

From the foregoing perspective, it is crystal clear that register of the sexual offenders and the attendant notification requirements is indeed a systemic form of continuous sanction against the registered sexual offenders for their past misdeed as it imposes various restrictions and obligations on the convict; the non-observance of which attract penalty. In addition, a registered sex convict is not unlikely to experience sustained emotional and mental anguish all of which qualify as a sort punishment.

Whether the sexual offenders register has yielded expected result by scaling down the menace of sexual abuse is a matter of fact as there is no clear-cut data upon which the impact of register of sex offender as deterrence towards curtailing rape can be decisively assessed. However, the fact remains that notwithstanding the creation of register of sexual offenders, rape cases have not totally disappear in the society. This is not to say however that the practice of registering convicted sexual offenders has been a story of abysmal total failure as the measure is capable of scaring prospective sexual offenders for the fear of having permanent stigma of criminal record coupled with the various legal restrictions and notification requirements imposed on registered sexual offenders.

II. RECOMMENDATIONS AND CONCLUSION

Undoubtedly, prisons are good for punishing criminals and ensure that they are kept off the street. Imprisonment of sex offenders for a fixed period of time has not remarkably proved to be efficacious in tackling the ugly trend of rape cases in any society as most of these convicts go back to commit another sexual offences or even worse crimes after being released from custody. Indeed, some hardened criminals have become attune to prison experience that they regard it as a mere routine visit or a periodic change of residence or accommodation.

To this category of offenders, incarceration does not deter them from future indulgence in act of criminality. The prison environment may become counterproductive and rather become a training ground for them as they may be opportune to mingle with advanced criminals from whom they learn more effective crime strategies which they may exhibit after their release from custody. However, where rape attracts life imprisonment, the convicted sex offenders are permanently incapacitated from committing sexual or any other forms of crime in the future.

In their natural state of mind, some individuals cannot get involved in acts of criminality. Hence, they resort to illicit consumption of drugs which embolden them to carry out sexual offences or any other offences they desire. Drug consumption considerably plays down the impact of deterrence in curbing rape cases. A sexual offender whose rational reasoning has been substantially blurred by drugs consumption is likely to be unbothered and indeed cannot be expected to fear any sanction attached to his nefarious action and this brings to limelight the interconnectivity between crime and drugs.

Rather than the customary prison sentence of sexual offenders, the relevant laws governing rape can be amended to include the subjection of convicted sexual offenders to community services in public places for a specified period of time with inscription "convicted sexual offender" on the uniform to be worn by them while on such duty.

For instance, convicted sexual offenders can be periodically engaged in environmental sanitation exercise in public places such as market and motor park among others public places under the supervision of relevant government agencies and possibly with media coverage. The stigma and shame of such public exposure will send a warming signal to those who may have the mind of committing sexual offence and consequently have a rethink.

The shaming policy measure currently being carried out in Ekiti State to tackle rampancy of rape incidence, especially girl child defilement in the State, is no doubt a lofty idea save for the absence of legal backing which renders it antithetical to the rule of law by subjecting sexual offenders to shaming measures outside the scope of the law.

As shown in the above consideration, in both the United States and United Kingdom jurisdictions, sex offenders are to ensure that they get registered under the relevant statutes. Failure to comply with registration processes is a punishable offence. However, in Nigeria setting, it is the sole responsibility of the government to register sexual offenders upon conviction as there is no obligation imposed on the convicted sexual offenders to facilitate their registration as sexual offenders. Thus, the issue of penalty for non-registration by the convicted sexual offenders does not arise.

Against the backdrop of the constitutional right of appeal to which sexual offenders are equally entitled, the registration of offenders in the sexual offenders register should be put on hold until the constitutional right of appeal of the convict has been fully exhausted save and except where such convict has not indicated interest in pursuing any appeal by not filing notice of appeal within the time prescribed for doing so in which case his failure to do so may be safely construed as a waiver of his constitutional right of appeal. In that circumstance, any subsequent registration in the sexual offenders register cannot therefore be vitiated.

Alternatively, there should be a provision in the law regulating register of sexual offenders which provides for deregistration or delisting of the name of convicted sexual offender whose conviction has been set aside on appeal as against the present arrangement where the law is worrisomely silent on such matter as if such registration makes the convict a life member once his name is entered in the register of convicted sexual offenders.

The power granted to the court under the Nigerian Violence Against Persons (Prohibition) Act ditto the domesticated Law to award compensation to the victims of rape in addition to imposition of various terms of imprisonment is certainly an act of double jeopardy against the sexual offender since such award is not an alternative punishment. Indeed, award of compensation to the victim which is to be paid by the sex offender is akin to a fine for his wrong doing. The word **shall** used in the provision would seem to make the award of compensation mandatory and not optional. What seems to be at the discretion of the court is the amount of such compensation; hence the usage of the expression "appropriate compensation to the victim as it may deem fit in the circumstance." The pertinent question is who pays such compensation to the rape victim where the sexual offender is sentenced to life imprisonment? Or where the convicted sexual offender is a minor with no financial wherewithal? The award of cost in the circumstance is therefore undesirable and should be discouraged.

One major limitation in relation to register of sexual offenders as deterrence is that some of those who engage in sexual offences are oblivious of the existence of such register or its legal implications until they are face to face with the law after they have committed the offence of rape and this ultimately renders the deterring quality of register of sexual offenders rather ineffective. Hence there is need for widespread publicity and education on the existence of the sexual register and the legal implications attached thereto.

In summation if the above suggested measures are strictly enforced coupled with vigorous and sustained efforts at addressing the causal factors of sexual abuse, this will no doubt culminate in appreciable success in the fight against the menace of rape in the society.