

Book Review: *The Structural Exclusion of Rape Complainants in South Africa's Criminal Justice System: Justice through Participation*

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Abstract

This paper summarizes *The Structural Exclusion of Rape Complainants in South Africa Criminal Justice System: Justice through Participation* by Jameelah Omar. The monograph by Omar systematically explores how the legal framework of South Africa, based on the tradition of Roman-Dutch and English law, structurally denies rape complainants a meaningful role in a process directly impacting their lives. The book elaborates a theoretical framework of participation-information access, protective measures, support services, and influence in the decision-making process and assesses both the domestic mechanisms that are in place and comparative international models of empowering involvement of the complainants. This review evaluates the contributions made by the book to the scholarship on criminal justice, places it within the rest of the literature on the topic of secondary victimization and victim-centered reform, and outlines what the analysis might have done to enhance the discussion with the practical implementation issues.

Keywords

Rape complainants, Victim participation, Adversarial criminal justice system, South Africa, Secondary victimization, Criminal law reform

Introduction

Treatment of rape victims by the criminal justice system has been one of the most burning issues in the modern legal studies. In all jurisdictions, survivors affirm that the justice seeking process only intensifies their suffering and never soothes them. Studies have shown that as many as seventy-two percent of the victims of rape report that their experience with the criminal justice system has been negative, and most of them attribute the experience to re-victimization [1]. The substantial rates of attrition, whereby cases are gradually filtered out at every step between reporting and sentencing, demonstrate failures in the system which disproportionately impact on survivors of sexual violence [2]. The adversarial legal process has been deemed a structural process that systematically marginalizes complainants. This process demotes them to passive bystanders, whose involvement is limited to giving evidence under cross-examination [3]. How to revise this system to better meet the interests of complainants has become the major obsession among

scholars at the intersection of criminal law, victimology and gender studies. Recent research on procedural justice has demonstrated that victims who feel the process itself is fair and that their voices are heard have higher chances of cooperating with the authorities as well as record better psychological outcomes, independent of the outcome of the case [4]. In the meantime, the restorative justice models have become popular as possible alternatives or supplements to the traditional criminal process, but their use in sexual violence cases is still a disputed issue [5]. It is against this context that Jameelah Omar's monograph is a timely and systemic study of the issue of victim participation in the particular setting of the South African adversarial legal tradition. It aims to justify an increase in the participation of rape complainants by means of a rigorous analysis of the structural barriers that these victims encounter.

Overview of the book

The work by Omar is divided into ten chapters, the first

ones discussing theoretical backgrounds and the second ones presenting the proposals for reform. The conceptual and contextual framework of the study is formed in the beginning chapters. Chapter 2 presents an in-depth analysis of the concept of participation itself, after the introductory chapter that puts the research question into context and gives a reason why participation by complainants is important in the South African context. Based on the available literature, Omar outlines four core dimensions of participation that can be used by rape complainants: access to information, availability of protective measures, provision of support, the possibility of influencing decision-making. This theory can be used as an analytical tool by which the rest of the book judges the sufficiency of the current arrangements and the possibility of reform.

Chapter 3 is concerned with the connection between participation and justice in the criminal process, where the functions of criminal proceedings should not be confined to punishment but must also be extended to the wider interests of complainants. Omar identifies four types of reasons to increase the involvement of complainants: enhancing better sentencing outcomes, providing better systemic efficiency and service quality, providing direct benefits to victims and preserving process values and rights. These theoretical chapters provide the framework of further analysis as they set the normative base of the involvement of complainants that is not limited to the traditional adversarial paradigm.

The central chapters change the emphasis to the real-life scenario of rape complainants in South Africa. Chapter 4 gives a full historical and legal discussion of the history of rape law, both substantive and procedural. Despite her recognition of positive legislative changes, such as the Criminal Law (Sexual Offences and Related Matters) Amendment Act and its subsequent amendments, Omar demonstrates that the fundamental status of rape victims as passive witnesses has not changed. The analytical heart of the book is chapters 5 and 6. Chapter 5 systematically discusses objections to enhance complainant participation, including objections to the adversarial two-party system, excess subjectivity, principles of natural justice, increased legal representation, and the limited empowerment capacity of the system. Chapter 6 then advances the central thesis: The adversarial tradition itself generates structural

exclusion.

The last chapters go to solutions. Chapter 7 reviews the current South African laws and policies that open opportunities to complainant participation, although they might still be inadequate and limited. Chapter 8 takes a comparative approach, discussing models of the International Criminal Court, the International Criminal Tribunal of the Former Yugoslavia, the International Criminal Tribunal of Rwanda, and the Extraordinary Chambers of the Courts of Cambodia. These global precedents can be used to show the ways in which adversarial systems may integrate participatory victim mechanisms without undermining their procedural integrity. The chapter 9 gives practical suggestions of greater involvement of the complainant in South Africa with the necessity of unity between active and passive involvement of the complainant at every phase of litigation procedure. The final chapter synthesizes the argument. It proposes that victim participation should be created over the whole criminal justice process, not just during the trial stage. Such participation can effectively influence a large number of victims and lead to relief, empowerment, and healing objectives.

Strengths and contributions

The major positive aspect of the monograph by Omar is the novelty in diagnosing the structural processes by which the adversarial system filters out rape complainants. Instead of considering victim marginalization as an incidental shortcoming of the criminal process, Omar shows that exclusion is a characteristic of the adversarial paradigm adopted in South Africa. The structural analysis is an important contribution to the field because it takes the discussion beyond demands of ad hoc reforms to a structural interpretation of the forces that maintain the marginalization of complainants. In that way, the work reflects a broader body of academic literature. This literature argues that negative experiences with the criminal justice system are not merely due to personal failures. Rather, they are also the result of long-standing institutional processes that regularly marginalize the survivors of sexual violence [6].

The second significant contribution is the book's theoretical framework, which promotes the idea of participation. It does so by proposing the involvement of

a complainant in the whole criminal process, while paying attention to objections to the case based on the adversarial paradigm and disapproving of them. This victim involvement method has been receiving more and more academic interest over the last few years. The studies of prosecutor functions within adversarial procedures have pointed out that the absence of any significant interaction between prosecutors and the victims may increase the trauma of complainants and make them less engaged in the process [7]. The framework provided by Omar is a response to these issues that is systematic, in that it explains how participation can be designed in such a way that it does not violate the rights of defendants and yet serves the legitimate interests of complainants.

Third, the comparative aspect of the book makes an important contribution to the analysis. Using examples of other criminal courts abroad and international criminal courts, Omar shows that the incorporation of victim participation models into adversarial systems is not a far-fetched idea but a reality in other legal systems. This comparative approach is especially helpful in the light of the current discussion on the topic of victim legal representation in sexual offence cases that is taking place all over the world. The possibility of independent legal counsel for sexual violence complainants has been studied recently in jurisdictions such as Australia, Ireland, and Sweden. The studies found that access to legal representation may reduce the risk of secondary victimization by enabling victims to exercise their procedural rights [8]. These studies are complemented by the work of Omar who places the question in the context of the specifically South African legal tradition of Roman-Dutch and English law.

Lastly, the book has a significant contribution to the South African legal scholarship in particular. Sexual violence is particularly high in South Africa, as more than 53,000 sexual crimes have been reported since April 2022 to March 2023 alone, and the rates of conviction are extremely low. There have been notable legislative changes in recent years. Examples include the 2022 revisions to the Domestic Violence Act, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, and the Criminal and Related Matters Amendment Act. These changes indicate a rising tendency toward legislative dedication to victim-focused strategies. The

work by Omar presents a fundamental academic basis for explaining how these legislative developments could be made into a meaningful process of procedural involvement by complainants in the courtroom itself.

Critical assessment and limitations

Although the book of Omar is a large academic accomplishment, there are some shortcomings that are worth mentioning. The greatest issue is that the work is mostly theoretical. The book also gives a detailed space in the development of conceptual backgrounds, historical background, and institutional background, and this inevitably shortens the discussion of specific proposals of reforms. The comparative shortness of the practical reform agenda might be unsatisfying to readers who have been exposed to the rich theoretical base. The implementation aspects, such as the resource sharing questions, institutional capacity, training needs of judicial officers and the compliance monitoring mechanisms, are given less emphasis compared to theoretical reasons of participation. The criminal justice system of South Africa has numerous well-documented issues, such as case backlogs, lack of resources, and coordination problems between stakeholders. Considering these facts, the analysis could have been enhanced by a more comprehensive consideration of the feasibility of implementation.

Also, although the disjunction between law-on-the-books and law-in-practice is recognized by the book, empirical evidence would have helped the author to base the theoretical suggestions on lived experience. Recent empirical research in other jurisdictions has produced valuable results on the impact of procedural reforms in practice on the experiences and outcomes of survivors. Consider studies that have explored the experiences of victims during police investigations. These studies report that relational aspects of procedural justice matter significantly. Specifically, perceptions of care, agency restoration, and connectedness are strongly linked to victims' willingness to report future victimization and to their overall well-being. On the same note, empirical studies of the implementation of restorative justice in sexual violence have shown that most respondents have positive experiences when victim-led and facilitated by specialized practitioners [9]. Such empirical views would have added more depth to the normative arguments

presented by Omar.

Also, the comparative study, although useful, could have been expanded to cover more recent local innovations in other adversarial jurisdictions that have also had to struggle with comparable issues. There is new discussion on sexual violence-focused courts, trauma-centered courtroom operations, and technological applications to mitigate the re-traumatizing impact of courtroom testimony. This discussion provides more points of comparison that might have guided the South African reform agenda [10]. A deeper involvement in these trends would have placed the proposals of the book in a more fertile context of current reform initiatives.

Conclusion

In spite of these shortcomings, the monograph by Omar is a crucial contribution to the body of literature on the access of victims of rape to justice. By engaging in the process of victim involvement as a whole system of criminal justice, instead of viewing the concept as just a part of the trial stage, the book convincingly shows that there can be a meaningful opportunity to engage victims. This engagement can support the objectives of relief, empowerment, and healing. This re-theory poses a challenge to the traditional view of the role of the complainant in adversarial proceedings and has provided a principled basis on which to reform.

The book offers a systematic, theoretically rigorous examination of the judicial role of rape complainants in the adversarial paradigm. It is distinguished by a constructive reform agenda that is both a critique of the adversarial system and informed by international comparative perspective. The book features an easily accessible writing style and a well-organized structure. As a result, it is appropriate not only for specialized scholars but also for advanced students in courses such as South African law, victimology, restorative justice, feminist legal theory, and gender and law.

As South Africa struggles to overcome the crisis of sexual violence, the work of Omar is both a diagnostic instrument and a normative guide. It sheds light on the structural sources of complainant exclusion and maps a way forward to the criminal justice system that pays proper attention to the interests and dignity of those whom it is supposed to serve. The book is well recommended to researchers, practitioners, policymakers, and students who are interested in the issues of justice to

survivors of sexual violence.

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Conflicts of Interest

The author declares no conflict of interest.

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