

The court for sexual offences: Perceptions of the perpetrators of sexual offences[☆]

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Abstract

This article explores the largely hereunto-ignored perceptions of the offenders within the specialist sex-courts in Bloemfontein, Free State, South Africa. Various factors potentially affecting such perceptions within this group of individuals are identified by way of theoretical orientation. Respondents were inclined to view the Court for Sexual Offences as biased in process and excessively punitive with regard to sentencing. The specialist sex-court was also perceived to be inefficient and slow. Female prosecutors were judged to be overly involved in cases to the extent that their objectivity was impaired. The need for additional research in various related areas is also explored.

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1. The court for sexual offences: Perceptions of the offenders

The Court for Sexual Offences in Bloemfontein, along with the other courts in the national system of specialist sex courts, has been identified as an institution dedicated to championing the rights of the victims of sex crimes (Barnes-September, 1998; Opperman, personal communication, 2000; Moul, 2002; Petril, 2003). This is reflected in the Court's undertaking to reduce the trauma experienced by victims during trials, and to increase conviction rates of sexual offenders, thereby improving justice for the victim. There is no doubt that this attitude is a reflection of the sentiment that exists within South African society in general. The public appears to feel that more aggressive judicial approaches to the management of crime are needed. This is particularly true of sex crimes. Moreover, a public perception seems to exist that the State is not doing enough to protect society from sexual predators (Walker & Louw, 2005a, 2005b).

Public pressure, the portrayal of sexual offenders in the media and the establishment of specialist sex courts would appear to have created a socio-legal environment in which the perpetrators of sex crimes are viewed as monsters who should be locked away for life—the current correctional dispensation no longer allowing for more lethal methods of

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retribution. However, the perceptions of those individuals accused of sexual offences are an important yet seemingly previously ignored source of information in this regard. Consequently, this article aims to shed light on the experiences of the perpetrators of sex crimes involved with the Court for Sexual Offences in Bloemfontein.

The lack of relevant literature on the attitudes of offenders or convicted prisoners towards the criminal justice system reflects the total dismissal of this sector of society as credible evaluators of the judicial process. The relatively novel character of specialist sex courts also makes the quest for existing research in this area a totally fruitless exercise. The vast majority of research done on sexual offenders appears to focus primarily on categorization, profiling (MacDonald, 1995), risk management (Browne & Lynch, 1998; Hanson, 1998; Gidycz et al., 2001) and rehabilitation (Carich & Stone, 2001; Gordon & Porporino, 1990; Simon, 1998). [The authors advocate the use of the term “development”, as “rehabilitation” infers a return to the individual’s previous level of functioning, i.e. the functioning that originally facilitated the commission of the sex crime.] It is somewhat disconcerting, though perhaps understandable, that the perceptions of sexual offenders do not seem to be deemed worthy of research. However, in a democratic judicial system, one would expect the views of the offender to be valued as regards the prevention of bias and maintenance of objectivity within the criminal justice system. Surely as court users, sexual offenders are in a similar position to that of the victims of sexual offences and their families regarding the evaluation of this process (Benesh & Howell, 2001).

Perpetrators of sexual offences could be expected to view the judicial system in which they find themselves, as subject to various situational and demographic influences. Not least among these would be the very real and immediate interest that these individuals have in the outcome of their trials. Satisfaction or dissatisfaction with the judiciary on the part of those accused of criminal activities has been shown to be a direct consequence of the perceived favourability of the specific court’s verdict (Benesh & Howell, 2001). Consequently, it would appear that in the majority of cases concerns regarding procedural fairness are secondary to those related to self-preservation. These findings would impact upon the interpretation of the perceptions of incarcerated individuals who, by virtue of their imprisonment, can be assumed not to be inclined to evaluate their experiences with the court in a very objective manner. An investigation of a predominantly female-staffed court, like the Court for Sexual Offences in Bloemfontein, complicates the interpretation of these predominantly male offenders’ evaluations still further. The level of perceived or possibly existing staff bias is increased by the fact that staff members are permanently assigned to the Court. This lack of rotation between the sex courts and more generalist criminal courts, while increasing specialization among staff, may impact negatively upon their ability to remain objective (cf. Powers, 1997). One must therefore question to what extent perceived persecution or bias on the part of the Court can be dismissed as the skewed perceptions of disgruntled offenders, and to what extent some degree of inadvertent bias exists within the system.

The large stake that individuals accused of sex crimes have in the workings and findings of the Court for Sexual Offences cannot be denied. Ironically, however, those individuals with heavily vested interests in judicial proceedings most often have the least control over the outcome of these proceedings (Benesh & Howell, 2001). These individuals are placed in a position of helplessness or dependence that often results in resentment towards, or suspicion of the institutions that are perceived as having excessive control over their lives. People thus often perceive the courts negatively merely as a result of having interacted with them in a dependent or powerless capacity. The impact of a negative outcome, such as conviction and sentencing, would serve to further influence offenders’ perceptions of the Court’s impartiality and legitimacy.

It is impossible to ignore the role that bias plays in convicted offenders’ evaluation of the criminal justice system, and in fact their perceptions of the quality of treatment they receive from the courts should not be ignored. This is of particular importance when one considers that the majority of sexual offenders involved in the current study tend to come from the less advantaged socio-economic and socio-political sectors of South African society (Opperman, personal communication, 2000). Consequently, the opinions of the victims and their families that the judicial system is biased against the disenfranchised (Walker & Louw, 2005a, 2005b) may well be shared by the offenders. Much like the victim and their families, the offenders could be expected to have limited exposure to the criminal justice system or perhaps even negative experiences based on past convictions or their current detention. Consequently, the degree to which the court officials respect the personal dignity of the offenders and are able to communicate cordially with them throughout the legal proceedings, could mediate the extent to which offenders may inherently be inclined to evaluate the Court (Tyler, 2001).

The judiciary is said to serve the public (Benesh & Howell, 2001; Kaukinen & Colvavecchia, 1999). The offender, despite the limitation of certain rights at sentencing, remains a member of society. Thus, even though the Court for Sexual Offences mainly advocates the rights of the victim and the protection of society, it has a

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