

BOOK REVIEW OF PAMELA COX AND SANDRA WALKLATE (EDS), *VICTIMS' ACCESS TO JUSTICE: HISTORICAL AND COMPARATIVE PERSPECTIVES* (ROUTLEDGE: 2022)

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I. INTRODUCTION

To what extent are modern criminal justice systems able to deliver on their promise of 'justice'? What imaginations of 'justice' find their way into the legal system, and what are left out? Criminal law as a device to redress public wrongs has been the subject of intense scrutiny by a range of scholars, social and political movements, human rights practitioners, and even domestic and international institutions.

Abolitionists question whether processes mediated by the State's monopoly over violence, culminating in punitive and discriminatory forms of imprisonment, are capable of redressing structural harms that are at best symptomised by formal notions of crime and criminality.¹ Can carceral frameworks deliver 'justice' to victims of crimes at all? Another stream of scrutiny, while divided on the legitimacy of State authority under criminal law, questions the limited role of victims as witnesses in the criminal justice machinery, and their glaring absence as important stakeholders in the process.² Speaking to the phenomenon of "secondary victimisation", this stream of scrutiny, represented largely though not exclusively by feminists, child rights advocates, and other human rights frameworks, advocates law, policy, and institutional reform to recognise rights and enable participation of victims in criminal justice processes towards greater access to justice. All of this remains complicated scrutiny, as criminal law continues to dominate a State-led pursuit of justice for public wrongs, and as a device for regulating social and economic relations.

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¹ See, for instance, Angela Y Davis, *Are Prisons Obsolete* (Seven Stories Press 2003); Kristin Bumiller, *In an Abusive State: How Neoliberalism Appropriated the Feminist Movement against Sexual Violence* (Duke University Press 2008).

² Partners for Law in Development, *National Conference on Women and Access to Justice: A Report*, (10-11 December 2006) <<https://pldindia.org/research/publications/women-culture-and-access-to-justice/>> accessed 8 November 2023; Helen Fenwick, 'Procedural 'Rights' of Victims of Crime: Public or Private Ordering of the Criminal Justice Process?' (1997) 60(3) *Modern Law Review* 317; Douglas E Beloof and others, *Victims in Criminal Procedure* (4th edn, Carolina Academic Press 2018).

The edited volume on *Victims' Access to Justice* by Pamela Cox and Sandra Walklate offers a timely opportunity to reflect on these legal, policy, and institutional reforms over the past half a century to secure the rights and participation of victims in the criminal justice process. The volume emerges from an inter-disciplinary empirical research project to study victims' access to justice in English criminal courts from 1675 to the present. In its final form, however, it takes within its sweep a wide range of methodologies and universes, covering adversarial common law jurisdictions such as India, Canada and Wales, as well as non-adversarial legal systems in Sweden, Brazil, the Netherlands, and Spain. Contributors to the volume include researchers and practitioners with a long history of engagement on law reform and crisis intervention, who variously bring to bear historical, comparative, feminist, decolonial, empirical, and other approaches to this extensive study. Although victims' rights and participation within the criminal justice process have intermittently been the subject of international norm development,³ the volume limits its focus to law reform and institutional initiatives within the domestic legal sphere of these different jurisdictions.

As a part of Routledge's series on 'Victims' Culture and Society', the volume sets out to answer three questions: *first*, subjective and legal imaginations of victim-centric justice; *second*, the manner in which legal systems and policies accommodate such imaginations of justice; and *third*, processes by which different criminal justice systems enable or inhibit victims' rights and participation. At its heart, the endeavour is to interrogate the reasons underlying the failure of legal systems to secure access to justice for victims despite prolific initiatives across jurisdictions over the past many decades.

In this book review, I first offer an overview of the content and structure of the volume, with brief notes on individual contributions. While the volume covers a wide range of concerns, in this part, I focus on key thematic findings with respect to law and policy reform in the domain of victims' access to justice, and the role of the voluntary sector and victim support services. I also focus on the contributors' findings on notions of 'justice' that influence States in their institutional reforms and victims in their perceptions of redress. In the second part, I remark on the value of these reflections in charting the way forward on persisting and emerging challenges to victims' rights. Here, I emphasise

³ United Nations General Assembly, 'Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law', General Assembly Resolution 60/147, adopted on 16 December 2005; Carlos Fernández de Casadevante Romani, 'International Law of Victims' in A von Bogdandy and R Wolfrum (eds), *Max Planck Yearbook of United Nations Law* (Max Planck Foundation 2010).

the need for deeper scrutiny of the tri-partite relationship between the State, victims, and accused in the criminal justice system, particularly given the fraught relationship between citizens and police powers of the State in the South Asian context.

II. OVERVIEW OF THE VOLUME

The volume proceeds in three sections, with the first focusing on the United Kingdom, the second on adversarial common law jurisdictions, and the third on non-adversarial civil law jurisdictions. Within this jurisdictional rubric, individual contributions are anchored in critical analyses of legislative and institutional reforms in the realm of procedural law, prosecution, remedies and social services to recognise a (limited) role of victims in legal processes. These include Lamont's⁴ review of the disappearance of victims from adversarial criminal processes in England over time, Barn and Kumari's incisive analysis of law reform in the domain of sexual violence in India,⁵ and Manikis and Iliadis' focus on crimes that do not reach prosecution.⁶ The entirety of the final section covers law reform in Sweden,⁷ the Netherlands,⁸ Spain⁹ and Brazil.¹⁰ Separately, Impara¹¹ and Mawby¹² address civil society

⁴ Ruth Lamont, 'The Crown Against...: The Victim and the State in the Pursuit of Criminal Prosecution, 1840-1985' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

⁵ Ravinder Barn and Ved Kumari, 'Gender, Sexual Violence, and Access to Justice in India' in Cox and Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspective* (Routledge 2022).

⁶ Marie Manikis and Mary Iliadis, 'Analysing the Victim Review Scheme of Decisions Not to Prosecute in England and Wales and Within Comparative Jurisdictions' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

⁷ Kerstin Svensson and Carina Gallo, 'The Swedish Welfare Model and the Development of Social Services for Crime Victims,' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

⁸ Maarten Kunst and others, 'Victim Participatory Rights in Dutch Criminal Proceedings: A Review of Research on their Potential Effectiveness' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

⁹ Gema Varona, 'The Critical Presence of Absent Victims in Criminal Policy: Fragments of Spanish Legislation' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

¹⁰ Thiago Pierobom de Avila, 'Evolution of Victims' Access to Criminal Justice in Brazil' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

¹¹ Elisa Impara, 'Using Crime Survey Data to Track and Measure Access to Justice: Problems and Possibilities' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

¹² Rob I Mawby, 'The Changing Landscape of Service Delivery for Victims of Crime in England and Wales in the Last Fifty Years' in Pamela Cox and Sandra Walklate (eds), *Victims' Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

interventions in crisis support, particularly by independent feminist organisations for domestic and sexual violence victims; and challenges with data collection to measure the successes and failures of State-led victim support initiatives. Shore and Williams,¹³ and Petoukhov¹⁴ make crucial interventions on the construction of ‘ideal victim types’ through structural biases within the criminal justice system and stereotyping by judicial and other State authorities based on race, gender, age, sexual orientation, etc. Gema Varona also highlights the structural limitations of crisis support through the vantage point of so-called ‘hidden victims’, that is, those who remain invisible not only to the legal system but also to social support services.¹⁵

In doing so, the volume brings attention to ‘justice gaps’, ‘implementation gaps’, and ‘conceptual gaps’,¹⁶ as phenomena that are by now all too familiar to those engaged in law reform and advocacy based on access to justice frameworks. The justice gap speaks to the structural under-reporting of crimes by victims, especially sexual and institutional violence against women, children, and sexual minorities, such that legal systems encounter but a small percentage of those who have experienced harm. The implementation gap describes the inability of institutions to adequately adapt and respond to law and policy reform measures, and thus, their failure in transforming victims’ experiences of the justice system. The conceptual gap measures the differing evaluations of who constitutes a victim, and consequently merits a role in prosecution and redress.

The comparative analysis effectively illustrates that geography and the type of legal system, while relevant, are not overriding factors bearing upon the exclusion of victims’ rights, interests, and participation in seeking redress and justice. Expansion in remedies through recognition of victim compensation, formal and independent victim support services, and to some extent procedural law reform, emerged more or less contemporaneously across jurisdictions. The content of law and policy reform also shows remarkable affinity across geographies, in the form of special tribunals for

¹³ Heather Shore and Lucy Williams, ‘Divergent Victims in the Old Bailey, 1950-1979’ in Pamela Cox and Sandra Walklate (eds), *Victims’ Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

¹⁴ Konstantiv Petoukhov, ‘I Want Your Tears and I Want them to be Real’ in Pamela Cox and Sandra Walklate (eds), *Victims’ Access to Justice: Historical and Comparative Perspectives* (Routledge 2022).

¹⁵ Varona (n 9).

¹⁶ Pamela Cox and Sandra Walklate, ‘Introduction’ in Pamela Cox and Sandra Walklate (eds), *Victims’ Access to Justice: Historical and Comparative Perspectives* (Routledge 2022) 9.

vulnerable victims, modified procedural rules to ensure sensitivity in prosecutions, interventions in institutional cultures, practices and attitudes towards victims, among others.

It is the historical analysis that sheds light on the changing nature of State power and authority as a more relevant factor, underlining that access to justice is, eventually, political and cultural. For instance, both Mawby for England and Wales,¹⁷ and Svensson and Galo for Sweden,¹⁸ map the journey of support services for victims since the 1970s onwards. At one level, the distinction in the nature of constitutional polities between the two jurisdictions directly translates into the quality of support available to victims, irrespective of their status as victims. In Sweden, Svensson and Galo assert that universal health care and municipal social services were available to victims early on, based not on their status as victims but as individuals or families in need. Gradually, however, women's groups asserted that this welfare model neglected the specific vulnerabilities arising from violence against women.¹⁹

In common in both jurisdictions was the pioneering role played by NGOs and the voluntary sector in developing programs for victim support, particularly in cases of violence against women. NGO-led victim support centres and services proliferated in the landscape, which would later become the model for State-led support institutions. NGOs also played the crucial function of advocacy with law-makers and State institutions, which was instrumental in placing victims on the political agenda, and pushing the envelope on the scope of State obligation towards victims.

Over the ensuing decades, while Sweden witnessed a gradual decentralisation of service delivery for crime victims, England and Wales went in the other direction towards greater centralisation but localised agenda-setting. Protocols for service delivery also changed, with Mawby expressing scepticism in the ability of contemporary models of victim contact in bringing victims into the fold of support services.²⁰

The volume also offers an in-depth empirical review of particular victim support initiatives and schemes in England and Wales, in the form of crime surveys, witness service, victim support offering psycho-social, paralegal support, etc. Such an evidence-based evaluation of interventions is well-

¹⁷ Shore and Williams (n 13).

¹⁸ Svensson and Gallo (n 7).

¹⁹ Svensson and Gallo (n 7) 160-166.

²⁰ Shore and Williams (n 13) 91-92.

appreciated to take stock of the journey so far, and to map the way forward. For instance, Impara quantifies access to justice through a combination of variables relating to the experience of victims navigating the criminal justice system by relying on Crime Survey Data.²¹ Separately, the volume flags concerns about protocols of victim contact, intensity and sustainability of engagement with victims, and victims' own desires of interacting with the legal system that limits the efficacy of victim support services.²²

Equally relevant to flag here is the role of the police as gatekeepers to institutional support. This carries a political and cultural relationship with the kinds of victims that enter the formal legal system and independent support services. Shore and Williams show in England, for instance, victim support services travel from a preponderant focus on property-based crimes like burglary, and assaults against the elderly, to later focus on vulnerable victims like women and children. The early focus on property-based crimes emerges from a reliance on police records and formal reporting of crimes to identify victims. It is only with a politicisation of violence against vulnerable groups that feminist interventions are successful in shifting the targets of support services.²³ Sexual minorities, as victims of hate crimes, continued to be stigmatised within the judicial system.²⁴ Petoukhov further shows how the settler colonial agenda in Canada, which caused a proliferation of oppressive residential schools for children of indigenous groups, also marginalised experiences of sexual, physical, and emotional violence against children in residential schools, premised on stereotypical notions of "ideal" victims.²⁵

Apart from an evidence-based evaluation, Impara's contribution converges with Barn and Kumari's contemplation on subjective meanings of "justice" for victims. In their own ways, both emphasise the journey of victims through the criminal justice process as an important determinant of subjective satisfaction of a sense of justice. While Impara works their way through quantitative data beset with its own limitations, Barn and Kumari draw from a qualitative assessment of victim experiences through the criminal justice system. Barn and Kumari particularly underline a feeling of being heard, validated, and informed as crucial to satisfying victims' needs for justice.²⁶ This is a timely reminder in

²¹ Mawby (n 12).

²² Shore and Williams (n 13) 91-92.

²³ Petoukhov (n 14) 40-41.

²⁴ *ibid* 44.

²⁵ *ibid*.

²⁶ Barn and Kumari (n 5) 110-111.

an era of overcriminalisation, zero tolerance, and deterrence-oriented responses to violent crime, which compromise fair trial rights of the accused in the interest of victims' rights.

III. MAPPING THE WAY FORWARD

As stated at the outset, the edited volume offers an opportunity to take stock of victim-centric interventions in legal systems from the 1970s onwards, and to critically map the way forward. To this end, the volume offers valuable insights through a scrupulous evaluation of State obligations towards victims, the changing dynamics between State institutions and the voluntary sector, as well as the efficacy of victim support services across jurisdictions. The volume also presents a welcome refresher on the political factors underlying the label of "victim" and the contours of "justice", which have for long been on the agenda of access to justice-oriented advocacy, but continue to persist today.

Even though the relationship between State and victim is central to the inquiry, the volume studies 'victims' as a distinct identity, and then searches for their presence in the legal system. There is value in this endeavour. In terms of mapping the way forward, it would also be useful to interrogate the role and function of lawmakers, and investigative and prosecutorial agencies in representing the interests of the victim. What interests find representation and in what form is also a political question, which cannot be isolated from the larger trajectory of criminalisation and State power under the criminal justice machinery.

This is best exemplified in the relationship between victims and accused under procedural laws. Even as evidence mounts on the injustices of the carceral penal system, in terms of overpopulation, overrepresentation of marginalised groups, and overcriminalisation of social and economic vulnerabilities,²⁷ States continue to double down on deterrence-oriented draconian criminal frameworks. In India, as in many other jurisdictions in the world, sexual violence and acts of terror are met with stringent sentencing including capital punishment, increased State power, and abrogated fair trial rights of accused under procedural laws, among others. Part of the rhetoric justifying these so-called reforms is the rights and interests of victims and their need for justice.

²⁷ See, for instance, Irfan Ahmed and Md Zakaria Siddiqui, 'Democracy in Jail: Over-Representation of Minorities in Indian Prisons' 2017 52(44) *Economic and Political Weekly*; Vrinda Grover, 'The Adivasi Undertrial, a Prisoner of War: A Study of Undertrial Detainees in South Chhattisgarh' in Deepak Mehta and Rahul Roy (eds), *Violence and The Quest for Justice in South Asia* (Sage 2018) 201.

These measures place victims in competition with the accused, while offering a pretext for expanding coercive State power in investigations and prosecution of crimes. Varona, in the context of Spain, and Barns and Kumari in the context of India, address this concern in their contributions. Varona maps law reform in the domain of anti-terror measures and sexual violence and the location of victims in these processes, to reiterate the selection bias underlying acts and groups that attract the label of 'terrorism', and the enduring conflict with human rights in such law reform measures.²⁸ Here, Kent Roach's work on due process and victims' rights is instructive on the manner in which victims' rights commonly triumph over the rights of the accused over the period under study between the 1980s and 1990s.²⁹

Omitted from the analysis in the edited volume, but underlining the political dynamics behind recognition of "victims", are narratives of victims of corporate crimes and environmental harms. The continuing struggle of the victims of the Bhopal Gas Tragedy in the 1980s in India, or of residents of Tuticorin against mercury poisoning of natural resources, and consequent human rights violations with State complicity, further complicate the tale. The absence of victims of corporate crimes and environmental harms from the volume appears as a glaring omission. This is also one area which requires scrutiny on the tripartite relationship between the State, accused, and the victim, although in a different fashion than those under sexual violence and anti-terror laws. This may be of particular interest to scholars and practitioners in South Asia, given the radically different histories and contemporary relationship between citizens and the police powers of the State.

With an eye on the political economy of the criminal justice system today, and the selective instrumentalisation of victim interests, interrogating the tripartite relationship between the State, accused, and victims presents the next frontier of scrutiny. Cox and Walklate present a methodological template for scholars and practitioners to take up this next frontier of scrutiny with vigour and inter-disciplinarity.

²⁸ Varona (n 9) 193-195.

²⁹ Kent Roach, *Due Process and Victims' Rights* (University of Toronto Press 1999).