

*The Perfect Victim vs. the Imperfect  
Victim*

## **Abstract:**

This paper examines how societal and institutional perceptions of victims of sexual violence in South Africa influence the reporting or withdrawal of such cases. It analyses this issue through the lens of the perfect versus imperfect victim narrative, highlighting how these stereotypes affect responses from the criminal justice system, society at large and the survivors themselves. Additionally, it explores the drivers behind under-reporting and case withdrawal, referencing relevant literature and legal cases that contribute to non-reporting.

### **1. Introduction**

Sexual violence against women and children within the South African context occurs on such a large scale that it has been described as being socially ‘normalised’, ‘legitimised’, and supported by culture and societal acceptance.<sup>1</sup> Its widespread prevalence indicates that society’s beliefs about what constitutes rape may be legitimising acts of violence or creating an environment where these crimes can occur.<sup>2</sup>

Deane argues that, despite having one of the most inclusive and progressive constitutions in the world, South Africa also experiences one of the highest rates of sexual offences globally.<sup>3</sup> Rape breaches a survivor’s fundamental rights to equality, dignity, freedom from bodily harm and privacy, as protected by the Constitution.<sup>4</sup> It is a country currently striving to reconcile its highly inclusive and progressive constitution<sup>5</sup> with a society that remains largely patriarchal and influenced by cultural norms.<sup>6</sup> The government has introduced a progressive framework and adopted policies, programmes, and plans of action aimed at ending sexual violence, including various sexual offences legislation, specialised sexual offences units and comprehensive National Policy Guidelines for Victims of Sexual Offences.<sup>7</sup>

Additionally, the government has amended and introduced new legislation, redefined GBVF, expanded the scope of the National Register for Sex Offenders, implemented mandatory DNA collection requirements, reinforced the NSP, expanded Sexual Offences courts and established

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<sup>1</sup> Blanchfield, Luisa. “The UN Convention on the elimination of all Forms of Discrimination against Women (CEDAW): Issues in the US Ratification Debate”. UN: CSR, 2011.

<sup>2</sup> Jewkes Rachel, Loveday Penn-Kekana, and Rose-Junius, H. “If They Rape Me, I Can’t Blame Them”: “Reflections on Gender in the Social Context of Child Rape in South Africa and Namibia.” *Social Science & Medicine* 61:1 2005.

<sup>3</sup> 3. Deane, Tameshnie. *Sexual Violence and the Limits of Laws’ Powers to alter Behavior: The Case of South Africa*, 2018.

<sup>4</sup> As acknowledged by Petse DP and Mabindla-Boqwana JA in the above quotation, rape is a heinous crime.

<sup>5</sup> Kruger, Johan. *Government and Society Must Act against Sexual Violence*”. Centre for Constitutional Rights: RSA, 2013.

<sup>6</sup> Coetzee, Daniella. “South African Education and the Ideology of Patriarchy”. *South African Journal of Education*, 2001

<sup>7</sup> Ibid note above.

Thuthuzela Care Centres. However, the question remains: why is there little or no progress in reducing sexual violence? The best possible explanation is that legislation and law alone are limited in fully addressing sexual violence. Cultural and social norms have been identified as highly influential in shaping individual behaviour, including the use of violence.<sup>8</sup>

Data from the South African Police Service indicates that tens of thousands of rape cases are recorded each year. However, these numbers only reflect a small portion of the true incidents, as many go unreported.<sup>9</sup>

The South African Medical Research Council released statistics showing that only one in nine survivors of sexual violence report the crime to the police. Low conviction rates discourage reporting, with just 50.5% of reported rape cases leading to arrests. Of these, only 42.8% result in formal charges, and fewer than one in five cases proceed to trial.<sup>10</sup> These concerning figures reinforce survivors' perceptions of the criminal justice system as ineffective, deterring them from engaging with it. One survivor expressed her cynicism about the system, saying: "I already had three sexual violence cases which I reported, and they never amounted to anything. So, what difference will be reporting this case make?"<sup>11</sup>

Sexual violence expert Gqola highlights that society's belief in a survivor's account often depends on whether the incident aligns with known rape myths, which typically involve a violent attack by a stranger and clear physical resistance.<sup>12</sup> These narratives heavily influence whether survivors report or abandon their cases. Cultural expectations of the ideal victim also shape whether survivors choose to report the crime. One survivor recalled the circumstances that hindered her from reporting: "There was no electricity in our building, and because I knew him, we had been talking on WhatsApp and visited each other's rooms plenty of times before, I didn't think there was anything wrong with spending time with him until the electricity came back. But I misjudged how drunk he was. When he started attacking me, he kept saying: 'Why would you invite me to your room knowing I had been drinking? You must have wanted to have sex with me.'" This paper will delve into the societal barriers to women's access to justice, shedding light on the urgent need for systemic reform.

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<sup>8</sup> World Health Organization. "Changing Cultural and Social Norms Supportive of Violent Behavior". Liverpool JMU: Centre of Public Health, 2009.

<sup>9</sup> South African Police Service (SAPS) "Crime Statistics Report" (2023).

<sup>10</sup> South African Medical Research Council "Tracking Justice: The Attrition of Rape Cases through the Criminal Justice System in Gauteng" (2008).

<sup>11</sup> Brodie, N. (2020a). *Femicide in South Africa*, Kwela Books, Cape Town.

<sup>12</sup> Gqola P D *Rape: A South African Nightmare* (2015) Johannesburg: MF Books.

## 2. The perfect vs. imperfect victim of sexual violence

The criminal justice system was designed to reduce the impact of crimes on survivors. However, it has taken a negative turn, increasing and worsening the suffering of survivors. Besides limited resources and lengthy court procedures, victims face many systemic and psychological barriers in their pursuit of justice. They are not only required to repeatedly recount their traumatic experiences to multiple officials, but also must undergo invasive medical tests necessary for evidence, which breaches their right to privacy and dignity. The process also affects victims psychologically because the very system meant to protect them scrutinises and judges them. This discourages those who do not fit societal ideals of a 'perfect' victim from coming forward, instead pushing them to the margins.

The Constitution guarantees laws that benefit all parties equally; however, rape cases often reveal stories of inequality. While victims are victimised and burdened with proving the crime and their moral character, the perpetrator is strongly protected by Section 35 of the Constitution, which clearly upholds the presumption of innocence until proven guilty beyond a reasonable doubt. In cases of sexual violence, the victim's morality is scrutinised, and if found to be lacking, imperfect or linked to unfavourable factors, suspicion arises and the case is often subtly dismissed from the outset. Although the principle of equality before the law is fundamental, imperfect rape victims face unequal treatment within the justice system.

Rape victims come from diverse backgrounds, including professionals, minors, and the elderly – all generally regarded as the ideal victims. Though the justice system is strict, these victims are usually met with empathy. However, victims who deviate from societal norms – such as those with certain body types, dressed in 'revealing' clothing, out at night, having consumed alcohol, or working as sex workers – are often blamed for the assault, while the perpetrator is excused. In *R v Sibande*<sup>13</sup>, the court stated that the complainant's character influences the choice of remedy in rape cases. Such superficial factors reveal deep-seated biases that undermine impartiality, promote victim-blaming and contribute to the under-reporting of rape incidents.

Criminologist and sociologist Nils Christie's concept of the ideal victim is a widely recognised theoretical framework that has been broadly used to analyse representations of crime and violence.<sup>14</sup> The framework describes the qualities that make certain individuals more likely to be recognised as an ideal victim within societal and institutional narratives. According to Christie, the

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<sup>13</sup> *R v Sibande*. 1958 3 SA (1) (A).

<sup>14</sup> Christie N "The Ideal Victim" in *From Crime Policy to Victim Policy* (1986).

so-called perfect victim is perceived as innocent, sober, modestly dressed, attacked by a stranger and quick to report the assault.<sup>15</sup> They are expected to be co-operative, delicate and visibly traumatised. Although this stereotype is unrealistic and exclusionary, it continues to influence institutional and public responses to sexual violence. However, the imperfect victim shifts away from this narrative because they might know the perpetrator (as is often the case), delay reporting, or have been drinking alcohol or socialising when the assault took place. Their trauma responses may be perceived as evasiveness or dishonesty. This distinction has been accepted as fact by society and institutions, leading to survivors who are classified in this light facing many more hardships when reporting their cases.

Further victimisation experienced by an imperfect rape victim lies in the hands of societal norms and misconceptions that are embedded within a justice system designed to operate impartially. To challenge these stereotypes and ensure victims feel safe enough to report rape, it is essential that the justice system undergoes reform and that survivors are educated about the processes involved. Legal procedures should be redesigned to prioritise victim-centred approaches that do not shame the victim but instead offer support. Moreover, key players within the justice system must undergo training before resuming their roles and while acting in those roles. This will not only help to eradicate stereotypes but also ensure that logic is combined with empathy in such cases. Until all participants within the justice sector collaborate wholeheartedly and commit daily to principles of equality, fairness, and dignity, the justice system cannot truly serve as a place of healing for those harmed. Until then, an imperfect victim remains unheard and unseen.

The persistent myth of the perfect victim continues to hinder justice and silence survivors. In a society where sexual violence is strongly connected to gender inequality, this narrative fosters under-reporting and case dismissals. Tackling this issue requires legal and institutional reforms, along with a wider cultural shift in how survivors are viewed and treated.

### **3. Social support networks for survivors of sexual violence**

Social support involves being part of a caring social network that is available to help through life changes. It is vital for maintaining mental well-being and has been shown to assist with coping after traumatic events. Social support, or the absence of it, directly affects how survivors navigate legal and psychosocial services following a traumatic incident. Research indicates that the decision

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<sup>15</sup> Ibid note above.

to disclose depends on various reasons: survivors may seek emotional support, try to reduce feelings of isolation and obtain practical assistance.<sup>16</sup>

Relyea and Ullman further explain that fear of not being believed, being blamed and potential stigma can all stop survivors from disclosing, especially to significant others.<sup>17</sup> Survivors often carefully choose whom to confide in based on their perception of the likelihood of receiving a supportive response.

The decision to disclose heavily depends on cultural and societal norms. Communities with strict gender roles or where sexual violence is highly stigmatised may make survivors less likely to disclose their experiences. In South Africa, where survivors are often burdened with the challenge of proving their innocence, they encounter negative responses such as victim blaming, disbelief and minimisation of the assault. These reactions have led survivors to withdraw or hesitate to report the assault or seek professional help, potentially delaying their recovery. Patterson argues that the desire to tell is not enough by itself; there must be someone willing to listen and an appropriate opportunity to share their experience.<sup>18</sup> Positive, supportive reactions give survivors the validation and empathy needed to process their trauma, while negative or dismissive responses may worsen feelings of shame, guilt, or self-blame.<sup>19</sup>

Survivors carry the burden not only of disclosure and the obligation to remember for their entire lives, but also of silence and shame. Additionally, they are expected to disclose immediately after the assault, facing invasive questioning and medical procedures, despite having no guarantee that service providers will take action.

Rape survivors who speak about their assault experiences are often punished for doing so, facing negative reactions from support providers. These discouraging and silencing responses usually come from professionals, leading survivors to question whether their future disclosures will be effective. Reactions from family and friends can increase self-blame and create doubt about whether their experiences qualify as rape. When service providers (experts) doubt survivors, hold them accountable for the assault, or refuse to help, survivors may doubt both the effectiveness of

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<sup>16</sup> Ullman, S.E., O'Callaghan, E., Shepp, V., & Harris, C. Reasons for experiences of sexual assault nondisclosure in diverse community sample. *Journal of Family Violence*, 2020

<sup>17</sup> Ibid note above.

<sup>18</sup> Patterson, D., Greenon, M, R & Campbell, R. Understanding Rape Survivors' Decision not to seek help from Formal Social Systems. *Violence against Women*, 2019

<sup>19</sup> Dworkin, E. R., Brill. C.D., Ullman, S. E & Batten, S. V. Social reactions to disclosure of interpersonal violence and psychopathology: A systematic review and meta-analysis. *Clinica psychology review*, 2019.

such services and the value of reaching out. Survivors face secondary victimisation, where they are explicitly blamed for the violence inflicted upon them.

It can be concluded that although the law plays a vital role in ending sexual violence as the most widespread human rights violation, there is a shared and significant role that communities, service providers and individuals can play in reinforcing the laws through a trauma-informed approach that not only holds perpetrators accountable, but also prioritises support and healing. As noted earlier, the South African government has enacted and introduced progressive legislation, however, it is through social support that survivors can reach out for help.

#### **4. Current jurisprudence on sexual violence in South Africa**

The crime of rape is currently defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SORMA) as “any person (‘A’) who unlawfully and intentionally commits an act of sexual penetration with a complainant (‘B’), without the consent of B, is guilty of rape”. This definition effectively repealed the common-law definition of rape when SORMA came into effect.

Through both case law and legislation, this definition has evolved into its current form. However, at present, the elements of rape that the prosecution must prove beyond a reasonable doubt are: 1) unlawfulness, 2) intent, 3) an act of penetration including vaginal, anal, or oral penetration – and 4) lack of consent.

In *Director of Public Prosecutions Eastern Cape v Coko* the Supreme Court of Appeal ruled that a lack of resistance does not constitute consent, and that agreeing to foreplay does not imply consent to anything further.<sup>20</sup> In this case, the complainant, referred to as TS, was in a romantic relationship with Coko, the accused.<sup>21</sup> TS had been clear from the start of their relationship that she was not ready to have penetrative sex, and she had informed Coko about this on multiple occasions.<sup>22</sup> About two weeks after their relationship started, TS went to Coko’s apartment to spend time with him.<sup>23</sup> They began kissing, and Coko began to take off her pants, at which point she closed her legs and he assured her that he had no intentions of having sexual intercourse with her, so she allowed him to take off her pants.<sup>24</sup> Coko performed oral sex on her, which she did not object to, before inserting his penis into her vagina and beginning penetrative sex.<sup>25</sup> TS objected, telling Coko

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<sup>20</sup> Director of Public Prosecutions Eastern Cape v Coko 2024 (2) SACR 113 (SCA) para 2.

<sup>21</sup> Ibid para 15.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid para 16.

<sup>24</sup> Ibid paras 17-18.

<sup>25</sup> Ibid para 18.

to stop and that he was hurting her, and initially tried to push him off her, but he continued, whispering apologies in her ear according to her testimony.<sup>26</sup> Coko testified that she did not tell him to stop, only that he was hurting her,<sup>27</sup> and stated that he had interpreted the oral sex as ‘foreplay’ to the penetrative sex, and did not realise that she had not consented because of her body language.<sup>28</sup>

The main issue in this case is the mistaken belief in consent, where an accused might avoid liability because they thought (although mistakenly) that the complainant had consented based on their body language or lack of resistance.<sup>29</sup> This dismisses the element of intention, as the accused genuinely believed there was consent and did not intend to commit rape. Mistaken belief is problematic because it is subjective and depends on the perpetrator’s perception of the situation, rather than the objective facts about whether consent was given.<sup>30</sup> This forces the complainant to prove that the mistaken belief was not reasonable, typically by showing she verbally withdrew her consent or physically fought back, reinstating the outdated requirement for survivors to cry out – an expectation long abolished due to its unfair burden on survivors.<sup>31</sup>

In the high court, the defence argued that Coko was justified in believing she had consented to penetrative sex because she had consented to oral sex, an argument that the High Court accepted and agreed with.<sup>32</sup>

As with the issue of tacit consent raised by Coko, there are several other instances in the discussion of consent where it becomes difficult to distinguish between consensual sex and rape, depending on the circumstances of the case.<sup>33</sup>

An example of this is the issue of intoxication. Generally, the rule is that an intoxicated person, whether under the influence of drugs or alcohol, cannot consent because they cannot understand what they are consenting to.<sup>34</sup> This is codified in SORMA, as section 1(3)(d)(iii) explains that someone experiencing ‘an altered state of consciousness’ due to any medicine, drug, or alcohol, and who cannot appreciate the nature of the act because of this, cannot give consent.

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<sup>26</sup> Ibid para 19.

<sup>27</sup> Ibid para 20

<sup>28</sup> Ibid para 21.

<sup>29</sup> SJ Stal ‘Does Mistaken Belief in Consent Constitute a Defence in South African Rape Cases?’ (2023) 26 Potchefstroom Electronic Law Journal 2, 10.

<sup>30</sup> Ibid 12.

<sup>31</sup> J Burchell Principles of Criminal Law 5 ed (2016) 614.

<sup>32</sup> Coko 148

<sup>33</sup> Coko 150.

<sup>34</sup> J Bodenstein ‘Intoxication, rape and the law’ (2016) Rape Crisis Trust.

However, this raises the question of how intoxicated someone must be to be unable to give consent, as levels of drunkenness range from only tipsy to completely unconscious, with no clear standard defining when consent becomes invalid due to intoxication. Generally, people recognise that if you are so drunk that you are sick or unable to walk, you are too intoxicated to give valid consent. However, there remains a grey area between that point and full sobriety, where an individual might make decisions and choices they would not while sober because alcohol affects decision-making and impulse control.<sup>35</sup> Can consent be given in this state? Where is the boundary?

Consent is often discussed as part of the conversation around rape, as it is a central element of what defines rape. However, consent is subject to issues and debates, which can result in an unfair burden being placed on survivors of rape to justify their actions during the assault in order to demonstrate a lack of consent. This raises the question of whether including consent in the definition of rape under SORMA is fair to complainants, or if the definition should be amended to better protect the interests of survivors.

## **5. Call for legislative reform**

As shown, physical resistance is not required to prove a lack of consent, but this has led to an ‘implicit’ resistance requirement. The defence of mistaken belief can be used to argue that the accused genuinely thought consent was given. Essentially, the mistaken belief defence relies on the idea that the accused believed (but was mistaken) that the complainant consented because she did not resist enough to indicate she did not consent. This implies that a complainant must resist to some degree for a ‘confused’ accused to recognise the absence of consent.

In *The Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others*<sup>36</sup> the Centre for Applied Legal Studies demonstrates how emphasising consent as a core element of common law and statutory sexual offences limits victims’ and survivors rights to access courts, equality, dignity and protection from all forms of violence. The defence of mistaken belief further reduces victims’ and survivors’ rights to justice and equality. This defence unintentionally perpetuates discriminatory views about women and other victims of sexual offences by enabling accused individuals to rely on rape myths and stereotypes, leading to under-reporting of rape cases.

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<sup>35</sup> Anonymous ‘Under the influence: The effects of alcohol on the body’ (2025) Gundersen Health System.

<sup>36</sup> *The Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others* (CCT314/24; 48656/22).

## 6. Conclusion

The problem is not only the existence of the defence of mistaken belief in consent, but also how rape and other sexual offences are defined based on a lack of consent. The current definition limits the rights of victims and survivors of sexual violence and should be deemed unconstitutional. We support the call to remove *'without consent'* from the definitions of rape and other sexual offences so that the burden is not on victims to prove they did not consent.

The current situation in our legal system means that when offences primarily affecting women occur, women face an additional obstacle in prosecution. This contributes to the high attrition rates seen in sexual offences, where only a small number of reported cases result in a conviction. This situation cannot be allowed to persist.

The Constitutional Court will deliver its judgement in *The Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others* (CCT314/24; 48656/22) on 25 September 2025.

## Journal Articles and Books

1. Brodie, N. (2020). *Femicide in South Africa*. Cape Town: Kwela Books.
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18. South African Police Service (SAPS). (2023). *Crime Statistics Report*.

### **Case Law**

1. *R v Sibande 1958 (3) SA 1 (A)*.
2. *Director of Public Prosecutions, Eastern Cape v Coko 2024 (2) SACR 113 (SCA)*:
3. *The Embrace Project NPC and Others v Minister of Justice and Correctional Services and Others (CCT314/24; 48656/22)*.