



Between Limited Laws and Conservative Patriarchal System: Why the Indian Security and Justice System is Less Effective to Prevent Gender-Based Violence against Women and Girls

Augustine Betialikong Aboh*

Department of Political Science, University of Calabar, Nigeria

*Corresponding author: Augustine Betialikong Aboh, Department of Political Science, University of Calabar, Nigeria, Tel: +2348034641345; E-mail: austinaboh@yahoo.com

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Abstract

This article investigates why the security and justice system has failed to protect women and girls from gender-based violence in India. Although violence against women and girls is prevalent in all societies, India has been distinctively remarkable for endemic forms of Gender-based violence, linked to the socio-cultural formation of the society. This has led to the creation of various laws, legislations and mechanisms to protect women and girls. But these crimes still persist unabatedly, indicating abysmal failure of the security and justice provisions. To understand the reason behind this ineffectiveness of the criminal justice system, this paper identifies two major factors namely: inconsistencies in laws that leave room for abuse; and the patriarchal system which in its strictest sense abhors the equality of men and women. However, irrespective of the challenges faced in the administration of justice, this paper reveals that the entire criminal justice system has been fundamentally compromised by the long-standing, never-ending ultra conservative misogyny and caste-patriarchy of Indian society which defines both social gender roles and relations, and rationalises various forms of violence meted against women in everyday India. This is the major clog in the wheel of effective security and criminal justice administration, thus efforts should be charted towards addressing this context of GBV where women have increasingly become helpless and easily disposable like chattels.

continuous existence of these social pathologies has hindered not just civilisation, but have become a major global health, development, and human rights problem.

India is no different, as 'violence against women, even in its most brutal forms, is not an uncommon event..., sadly, stories of the most horrendous violations have seemingly inured the state and citizens to inaction'. GBV crimes in Indian have become endemically horrific that commentators even ridiculously forename New Delhi as the 'world rape capital.' Indeed, several criminal justice systems put in place has either been unproductive or just being ignored and or compromised by even the state actors as domestic or cultural matters not worthy of government intervention [1]. In fact, various forms of GBV against women and girls have over time been sanctioned by Indian conservative pattern of socio-cultural norms, manifested in misogynistic patriarchy and caste system. This makes it difficult for the criminal justice system to work efficiently. Despite modern trends of equality in social relations, women and girls have continued to be dehumanised, raped and brutalised even by their immediate families.

However, the Indian Criminal Justice system came under severe criticism both from national and international fronts in the aftermath of 16 December 2012 rape of a physiotherapy student in Delhi, and subsequently the sexual assault of a female judge in her residence. The result of this prompted justice reforms which in 2013 saw to the enactment of the Criminal Law (Amendment) Act, 2013, out of the recommendation of the Justice Verma Committee Report [2]. Irrespective of the veracity of this new law, GBV crimes continue to be recorded even in an alarming and heinous way. This has been severally attributed to factors such as the patriarchal system; inconsistencies within the law, the negative role of Criminal Justice actor among others, which would form the basis of debates in this article.

Keywords: Gender-based violence; Patriarchy; Law; Security; Justice system

Introduction

Gender Based Violence, especially against Women and Girls, is prevalent and grossly endemic in all societies. The

Limitations of the Laws

In India, the provision of Laws to protect women and girls from violence and abuse started in the Colonial period.

Therefore, Laws and particular Sections of other Laws like the Indian Penal Code, 1860, the Indian Evidence Act, 1872, and the Code of Criminal Procedure Code, 1973, to mention a few were enacted to serve this purpose. However, as time passed, they were deemed ineffective and inadequate to counter the problem of rising crimes against women and girls [3].

Consequently, following the horrendous Nirbhaya rape case of December 2012, the Criminal Law (Amendment) Act, 2013, was enacted to provide an improvement to these identified pitfalls. Notably, the Act seeks to provide, among others, a harsh penalty of a minimum of 20 years' jail term or death sentence in a case where the victim is dead or left in a 'vegetative state' for perpetrators of extreme circumstances of rape and gang rapes [4]. It added in the Indian Penal Code for the first time sections covering crimes such as stalking, voyeurism, sexually colored remarks, acid attacks, touching, and human trafficking. And with a punishment of 10-year jail term and a fine reasonable enough to cater for medical bills of the victim in the case of acid attacks [5].

Ananth Guruswamy, Amnesty International Chief Executive, notes plausibly that the Criminal Law (Amendment) Act, 2013, has some welcome features. It commendably criminalizes various forms of violence against women and being sensitive to the need of physically impaired people. It also provides for certain victim-friendly procedures of evidence as well as its removal of permission by the government before the prosecution of public officials accused of GBV crimes. However, I agree with Ananth Guruswamy that despite these achievements, the Law is limited and fails to adequately address GBV against women and girls [6]. Four weaknesses have been raised which will be addressed by this article: the law's lack of clarity; the law's bias; the law's scope; the law is incomprehensive and inconsistent with international norms.

The Law's Lack of Clarity

Begum opines that one issue that is left unclear in the IPC and which the Criminal Law Act fails to address is the meaning of concepts like 'insult' and 'outrage to women's modesty,' in section 354 and 509 of the IPC. Indeed, this is true because the wording suggests a pervasive stereotype about women who are violated, and further undermines their physical and mental integrity [6]. Furthermore, Burgess and Holmstrom [7] argue plausibly that this notion presents women more as symbols of honor, hence undermining the criminal liability of the offence committed against them. By implication, 'victims' sexual objectification might diminish rapist blame' [8]. Going by Burgess and Holmstrom position, it must be noted that since it is the responsibility of women to keep themselves modestly, for her honor and that of the family, any violation makes her an instrument of shame to the community [9]. The inability of the law to clarify these concepts creates room for 'negative reactions and stereotypic judgment about victims of sexual violence' [10]. Therefore, victims feel psychologically dehumanized, and going to court becomes as much of a crisis as the actual incident of assault or rape itself, for fear of societal alienation.

More so, Bhattacharyya observes that, although new provisions inserted into the IPC, like S.354C on Voyeurism, S. 354D on stalking, S.370A on Employing of a trafficked person, S.326A on acid attacks, among other things, are a welcome development, nevertheless 'it remains unclear as to how the perpetrators of the offences like touching, stalking, and sexually colored remarks would be accused and subsequently prove the assailant guilty' [11]. To avert this difficulty, the law shifts the burden of proof to the accused. This further generates contradiction as it undermines the fundamental legal tradition of being innocent until proven guilty [12]. The result of this arguably is that men and their family being at the receiving end have often suffered unnecessary humiliation, pain and suffering due to false complaint lodged [13]. In retrospect, irrespective of the increase in reported cases of voyeurism, stalking and insult to the modesty of women of 84,746 recorded by NCRB 2016, these crimes as rightly argued above has witness abysmal low conviction. It does appear that mechanisms of gathering evidence for the prosecution of these offences are difficult to meet. Conversely, Satish and Majumder [14] observes arguably that in some cases, given lack of proof some men can be convicted of these crimes which they did not commit. Be that as it may, this section of the law makes it difficult to charge and prosecute offenders quickly.

Furthermore, Halder [15] acknowledges that the Information Technology Act's section on cyber voyeurism and 'bad talk' have been poorly framed. Its vagueness gives room for abuse by people who want to victimize others, and also allows the police to use their discretion to determine what constitutes 'annoying speech'. It may be noted that the anonymous nature of the internet provides a great opportunity for abusers [16]. Apparently, the lack of clarity as argued by Halder accounts for the inability of the Uttar Pradesh police to apprehend or prosecute those who sell rape video in the street. It indeed further faults the clarity of the concepts a used by the law and gives room for wrong and subjective interpretation. This was clearly evident in the Supreme Court's decision of Shreya Singhal vs. Union of India no.167 of 2012. The accused was acquitted, and the Section of the Act regarding voyeurism was declared unconstitutional as it is vague and curtailed freedom of speech in the cyberspace [15].

Therefore, though the law has significantly considered a wide range of offences which helps to protect women, its lack of clarity in some aspects has made it not totally successful in achieving its aspirations.

The Law's Bias

Various scholars have argued that the provisions of GBV laws are poorly drafted, and gender biased. Saini [17] posits that:

The domestic violence and dowry laws perpetuate domestic violence, rather than curb it.... It lacks provisions for men to complain against a woman for harassment.

Contrary to the assumption that men cannot be victims of domestic violence, Saini argues that domestic violence laws are massively unbalanced. The provisions of the Law only recognize that domestic violence can only be perpetrated by men or their relatives against the women/wife. Whereas, men who also live in abusive relationships by their female partners are not protected by law and finds it difficult to seek redress.

Accordingly, Shakil [18] observes that the idea of gender bias laws that favors only women in India largely undermines its effectiveness and acceptance. Both sexes suffer abuse and violence at home which is as the result of different reasons, purposes, and motives. It is believed by those who push for men rights that women are equally, if not worst, more violent than men [19-21]. Dedicating separate laws to protect women alone creates an avenue of injustice and segregation of sexes, and also allows women who abuse men get away scot-free [18]. The above positions of Saini, Shakil and others are dismissible because it only reflects a very few group of disgruntled men who have last men's right view that attempt to jeopardise the few legal protection of women in a misogynist India society. Indeed, in the aftermath of December 12, 2012 outrageous gang-rape, it was clear a large number of male groups came out in solidarity with the plight of women [22]. Accordingly, this research supports Lodhia [23] who states clearly that the rhetoric of anti-male victimization seeks to demonize women and mothers, and further obscure the glaring realities of violence against women. Be that as it may, the rationale behind the enactment of Laws protecting women in India was as a result of increasing incidences of crimes against women and girls. From the NCRB 2016 report, it is a fact that women and girls are often vulnerable and record very high victim rates in crime records. Even in conflict, women and girls often become a prime target of violence. For instance, the 2002 Gujarat violence where women and girls were main targets [24].

Varma [25] argues that the failure of the law is anchored on high rates of illiteracy of women, mostly in the rural areas. They are unable even to know what constitutes the law and related crimes. In this regard, the laws are elitist and undemocratic as they only protect urban upper and class women who are educated and economically stable [26]. The presumption of the scholars is that urban women are not usually victims but exploit these laws meant for the poor and rural women for selfish agendas. Contrarily, if this view is accepted, it would alienate most urban women who regularly face violence at home and workplace [23].

Laroya and Devanshi [12] further opines that new IPC sections on Voyeurism and Stalking are gender biased because they make provision only for the criminalization of such acts only if committed by men; whereas women who do same are not under the punishment of any law. 'This is very injudicious as there are often cases where women are also involved in commission of offence' [27]. The veracity of this argument is doubtful, and again reflects a set of disgruntled men view. Obviously, considering the socio-cultural dynamics of the Indian society, the proportionality of women's act of voyeurism and stalking against men is rare. Though there are

isolated instances where men become victims, it cannot be generalized because very few cases of this kind have been recorded. Few and remote evidence should not be used for criticizing the Laws that protect women and girls from many GBV. This argument lacks convincing evidence.

Conclusively, the provisions of the law in its wisdom and abundant evidence protect women because they are often victims of violence. The law is just peculiar and not bias because when women commit crime against men, the general criminal justice reprimands them as seen in the case of Eddie Kidd and his wife Samantha that was jailed [28].

Inadequate Scope of the Law

Marital rape

The immunity of marital rape is one grave limitation of different GBV laws enacted in India over the years. Not uniquely and Indian problem alone, 'holding husbands criminally responsible for non-consensual sex with wives has possibly been one of the hardest feminist battles to fight the world over' [29]. But the India case is worrisome because of its preponderance.

However, Ray and Aditya [30] opines that:

The Criminal Law (Amendment) Ordinance, 2013 discriminate against women on marital status and denies them equal protection before the law. Under section 375 of the amended Penal Code, wives cannot bring a charge of sexual assault against husbands except under extreme narrow grounds: where she is living separately under a decree of separation, or under any custom or usage.

The above assertions are true because the provision of the law has created an opportunity for husbands to abuse their wives with recourse to protection by the law. Except under the above exemptions or when the wife is under the age of 15, the law grants husbands the immunity to assault their wives sexually. This indeed has made the crime the most common against married women in India, whereas it goes unreported or unpunished. Incredibly, most women, especially in rural areas, lack the awareness that these acts constitute a crime [31].

Arguably, the Parliament reinstated that if criminalized, it will destroy the institution of marriage which is regarded sacred in India society, and rather it should fall within the ambit of cruelty to women [1]. It is indeed obvious that if left within the broad purview of cruelty to women, marital rape can easily be written off as a lesser crime which if insisted upon can increase tension within the family, and raise question of the sacred and contractual obligation of marriage itself [32]. Therefore, making it a case of less concern. But it must be noted that against the view of the parliament, obviously reflects the patriarchal order prevalent in India [33], women deserve their rights to bodily integrity enshrined in the Indian constitution [31].

Contrary to feminist scholars and women rights advocates, the 'impossibility of marital rape thesis' scholars have argued that going by legal definition, if rape implies sex without consent and marriage legally entails obligatory sex, then both are mutually exclusive. Such extraneous views further compound the atmosphere of shaming and stigmatization manifested in a compromised legal and political setting [34]. The 'notion of compulsory marriage' and 'obligatory sex' are intertwined and are socially and legally entrenched [29]. It is indeed possible to argue that as marriage is contracted each party owes a reasonable level of obligation to the other, especially in regards to sex. But against this position this paper argues that contract both in its legal and social term implies willful consent by both parties. Therefore, if the notion of compulsory marriage cannot hold without consent from both parties, then obligatory sex too must always be consented to. Because anything otherwise makes the woman a purchased product of owned property.

Flavia [35] argues that since sexual violence is not limited to rape alone, then penetrative sexual abuse should not be privileged over other forms. Flavia plausibly argues that by the definition sexual violence or penetrative sexual abuse is just one part of the crime. The insistence on rape alone further complicates the overall issue of sexual violence witness by married women. However, it is often difficult to legally prove in court a case of marital rape, except it is included with evidenced of domestic violence [35,36]. Therefore, Flavia position that both criminal and civil remedies should be used to address marital rape and another form of domestic sexual violence considering the compound nature of the crime, its reporting and difficulty in gathering evidence for prosecution is plausible.

Marital rape, therefore, should be addressed within the complex interaction between civil and criminal laws on marriage, divorce, property distribution, etc. more tenable. Therefore, marital rape debate should look into the fundamentals of what constitutes marriage and how laws should regulate it, and then we shall better locate and address this form of crime and impunity [29].

Armed forces immunity from prosecution

Lodhia [22] argues that the exemption of armed forces from criminalization and prosecution in cases of GBV crimes, in the guise of 'national security,' limits the success Law. The Criminal Law Act, 2013, 'by its omissions protected army officials who rape women in the regions of India's North East, preserving their legal immunity via Armed Forces Special Powers Act AFSPA.' Corroborating Lodhia's argument, Bhattacharyya and Baruah [37,38] aver that the Armed Forces Special Powers Act creates a sense of alienation among the people and causes a significant disturbance within North-East, and Jammu and Kashmir for instance. The argument of Lodhia and others credibly shows that this immunity has created vacuum which allows for incessant abuse of women. A remarkable instance is a sexual assault and rape by the Chhattisgarh policemen in 2015 against 40 women from Bijapur, and a 14-year-old girl [39]. Also, on 12th April 2016, a 16-year-old school girl was

assaulted by an Indian army officer, and most recently, the outrage that occasioned police release of details of the case of an 8years old Muslim girl, Asifa, who was kidnapped, sedated and ganged raped in a Hindu temple in Kathua allegedly by police officers and former and current politicians. These are just a few of numerous cases that are swept under carpet because of this inhuman immunity in the guise of national security.

Against this backdrop, the Government protects incidences of GBV against women and girls committed by armed forces as the AFSPA shields perpetrators from civil and criminal law prosecution. Though the government argues that when personnel are discharging their duty for the sake of national security they shouldn't be criminalized [38]. Without a doubt, it can be concluded that the exemption is not only a limitation of the Criminal Law Act, but an aberration of the fundamental principle of equality before the law enshrine in the India constitution.

The Law's Limited and Inconsistent in Compliance with International Norms

The Law is further limited by its incomprehensive formulation in regards S.326A and S.326B of the IPC as amended on Acid attack. The prohibition of Acid attack and its punishment has been criticized as ineffective [40]. Records shows an increasing figure of 122 cases in 2013, 349 in 2014, and over 500 in 2015, despite being underreported [41]. Bhattacharyya [11] opines that again the Law is at fault in its incomprehensive prohibition of both buying and selling of Acid. 'An acid called Tezab, which is designed to clean rusted tools but it often used in the attacks can currently be bought across the counter' [42]. Indeed, the lack of Law to regulate how this dangerous chemical can be easily accessed and by whom undermines and makes this acid attack law inadequate.

Another limitation widely criticized by scholars within the Criminal Law Act, 2013 is the introduction of a death penalty for in rape cases that result in the victim's death or being put in a vegetative state. It, as well, provides a punishment of life imprisonment without a possible option of release [6,22,30,43]. No doubt, this provision as clearly stated is a grave human right violation.

Arguably, Samuel [44] posits that death penalty serves as deterrence for felons. And as the Indian Supreme Court landmark case between Bachan Singh v. the State of Punjab reasserts the fact that death penalty can only be handed on 'rarest-of-rare case. Hence, 'a modern legal system would not risk the move of abolishing death penalty and putting in danger the life of an overwhelming majority of law-abiding and peace-loving citizens' [44]. Contrary to Samuel's position, Lodhia, Sailaja, and Amnesty International, plausibly argue that irrespective of the seemingly credible intention of the provision to deter potential offenders, this Law violates international human rights laws, and threatens human security and justice.

The Criminal Law (Amendment) Act, 2013, and the Protection of Children from Sexual Offences Act, 2012 has further been criticized for increasing the age of consent to 18 years. Despite the recommendation of the Justice Verma committee that it be reduced to 16 years, as it has been since 1983. It has been argued that criminalizing sexual acts with children who lack the capability to give meaningful consent are laudable. But increasing the age of consent will also expose adolescents whose consent is meaningful and have the right to control their sexuality to be criminalized [6,45]. By denying adolescents the right to control their sexuality it 'would encourage premarital sex, which is against the culture of the country' [22]. In line with the above arguments, a paradox exists where those who are privileged to be married with the legal age of 15 are exempted but those who find no fortune suffer the brunt of the law. Without doubt, this Law is inconsistent with other provisions of IPC on child bride. The Law allows the husband to have sexual relation with the bride if she's 15 years and above, with or without her consent since marital rape is not a crime. But prohibit adolescents of 18 years from having the right to consent for sexual relation.

Therefore, it can be succinctly observed that though the intention of the law was to reduce any chance of GBV radically, its enthusiastic reaction to the conundrum did not only challenge its judicial application but to a greater extent contradict international legal standards. This undermines binding Indian commitment to international law, convention and statutes.

Misogynistic Patriarchy and Gender Hierarchy

In India, violence against women and girls has historically been marked by perpetuations, progress and resistance. The failure of various reforms and laws protecting women has largely been associated with resistance from the social order. Hence, 'de jure institutional changes pursued by the population, government and apolitical groups are consistently resisted by social actors blinded by de facto cultural and historical pressure'. Of course, this pressure is not only sustained by the perceived perpetrators, but it also manifests itself amongst most Criminal justice administrators and the political class. For instance, in a case of sexual violence or rape, the legal system is designed instead to chastise women rather than the offenders [46]. In the process of justice administration, it has often been noticed that the police mostly feel reluctant to conduct investigation. Medico-legal practitioners too still use the two-finger test to ascertain if the victim is habituated to sex [47]. On the part of the prosecutors, they rarely get time to interact with the victims, whereas, defense lawyers often ridiculously use perverse tactics in cross-examination in order to win cases. In so doing the victim is derogated and embarrassed. Even witnesses usually turn hostile thereby weakening the veracity of the prosecution and creating an avenue for the judges to show sympathy to the perpetrators [46]. No doubt, this chapter argues that the preconceived patriarchal bias and insensitivities relating to women and girls often consumes various actors responsible for

the justice delivering system [48]. This 'reinforces the paradigmatic position of law as an isolationist and deeply hierarchical (patriarchal) institution'.

Nigam again argues remarkably that the entrenched misogynistic patriarchal system is still visible in contemporary India where attitudes and mind-sets are continually rooted in traditional notions. Indeed, the religious, political, as well as cultural norms, are so warped to create stereotypes of women as people who have no autonomy or control over their bodies. This is, sadly, met with acceptability. Consequently, the maltreatment of women and girls in a male dominated society, which robbed her of her dignity and pride, becomes justified and normalized. In effect, the Criminal Justice system becomes compromised [2]. In fact, 'Custom, tradition and religion in Indian has played, and continues to play, a significant part in sustaining the subordination of women' [1]. Notably, the persistent patriarchal norms and Hindu religion, which is dominant, suggests the total control of women by fathers, husbands and son, spanning from the cradle to the grave [9].

Therefore, Kapur and Cossman succinctly opine that:

Familial ideology naturalizes and universalizes the construction of women as wives and mothers, as economically dependent, as passive, dutiful and self-sacrificing, across a broad range of personal laws. It is an example of the often-homogenizing nature of legal discourse, which obscures the multiplicity of differences between and among women, and the very different ways in which women live in and experience their families.

This assertion further emphasizes the fact that various legislations or criminal justice reforms reflect a great extent the patriarchal control of the lives of women and girls. They have to submit to familial norms which most times 'reinforces relations of subordination' [49]. To wonder why violence against women and girls persists regardless of extant criminal justice system, one must recognize that 'any traditional custom that places women in subordinate position within society or in the family has the potential to turn violent' [50]. Consequently, such discriminatory traditional practices of Violence against Women (VAW) sanction traditionally, creates avenue for men 'excuses and rationalization for covering up abusive behaviors', further impedes women to even lodge official complaints, most times [51].

Culturally, specific forms of patriarchal norms tend to reflect on the 'socio-cultural preference of sons'. Whereas, the view those daughters are inferior is the crux for undermining criminal justice effectiveness in protecting women and girls from GBV [52]. This preference, which persists, according to Livne, breeds 'the inequality faced by women and girls even resulting to their denied right to being born'. The result of this, however, is the continuous female foeticides still recorded in India. This is evident in the sex-ratio that presently stands at '940 girls for every 1000 boys' [51]. In this regards, Singh further argues plausibly that:

Other factors related to marriage like dowry and patrilocality, more precisely rituals like 'kanya-daan' in which parents of daughter take pride in disposing her off forever as

'daan' to a son-owning family, significantly gift, i.e., 'daan' cannot be taken and returned and hence, after marriage, whether her in-law are treating her well or badly is seen as her destiny.

The above quote lends credence to the fact that most violence against women is often condoned by both parents. Because women and girls have been culturally stereotyped as burden and seen as a wasteful investment to their families. Therefore, when wives suffer violence, they are admonished not to seek judicial redress as it is her destiny and one of such complex encounters in every marriage. A remarkable instance of tolerance and impunity in the abuse of women is a reported incident in the state of Bihar in Eastern India, a man in June 2016, tied up his wife to a pole and brutally beat her with a stick in the present of the village onlookers for an alleged cheating [53].

According to Singh et al. [51] 'the putative sacredness of traditional marriage, rigid ideas of conjugality, and patriarchal traditions of family structure have usually taken precedence over concerns for women or children in Indian history'. This reflects the inequalities that exist even in marriage laws that present the socioeconomic vulnerabilities of women [54]. No doubt, the sacred justification of some traditional marriage rites like that act of Dowry giving and taking undermines the criminal justice system. Despite a total incidence of 9,894 recorded dowry deaths in 2015, which represents a paltry 1.6% decrease from previous year, 2014 of 10,050, and 7621 of 2016 the sacredness of this act remains sacrosanct and existential.

Even the Dowry Prohibition Act is patriarchal in nature as it only recognizes death resulting from it not prohibiting the act of giving or collecting dowry as it is theologically sanctioned by Hindu as a traditional practice, though with an ever increasing record of violence and death associated [55]. To some people, dowry transaction is a tradition they must oblige during marriage which also signifies 'power, prestige, and display. But for many others, it is a compulsion' [56]. In this regards, women are not seen as members of the new family, rather their safety and worth are measured by the dowry she brings and her ability to give birth to a son. This brings to fore two dynamics; first the sacredness of honor within the patriarchal system, and the economics of transactional commodification of women. Violence is thus inevitable. This is more complicated in recent times because of 'Indian's economic liberalization, unemployment and increased consumerism [49]. A clear example of this economic model can be seen in an incidence in November 2016 were a husband bites off his wife Nose after she allegedly refused to buy him a motorbike and a cash request of £1, 800. The victim alleged it was based on unpaid dowry [57].

Furthermore, patriarchal norms prescribe gender roles and place women in a powerless status, whereas, men are deemed to have 'superior rights, privileges, authority, and power' [58]. This rigid gender roles and norms makes it possible for women to be easily abused, especially intimate partners, in the name of 'disciplining' them when they fail to meet their 'gender role expectation' [59]. Indeed, within this misogynistic patriarchal

gender roles mythology, most women, and girls have been acculturated to believing that wife-beating is a form of discipline necessary to correct her. Various surveys, including the 2005-2006 National Family Health Survey, conducted have revealed that wife-beating is condoned by traditional societies, and is said to be justified in some circumstances. Hence, seeking judicial redress becomes an affront to established norms [58,60,61]. In fact, as most women are made to accept this cultural anomaly reporting violence becomes difficult thereby impeding effective criminal justice administration.

The patriarchal system further impedes the effectiveness of the security and justice architecture in regards the culture of shame and honor, seen as a form of 'hegemonic masculinity' [62]. The reporting of GBV has become intractably perilous because the victims tend to permanently alienate themselves from the community if they exposed their abuse. Thus, 'the honor/shame nexus refers specifically to male honor and constructions of masculinity as it is embodied in controlling the shame of their women' [63]. Various dynamics comes to play here. Firstly, in the name of honor, preservation of Caste or class integrity, crimes are often perpetuated and condoned. Since women are regarded as objects of protection and violence, 'the fear of losing this honor makes the men rationalized and justifies masculine aggression'.

Honor killing, for instance, has been persistent despite legal actions because adherents believe it explains their natural law and that 'modernization need not mean wholesale westernization and insist that traditional practices can be continued in modern India keeping the institution of family intact' [64]. The 'Khap panchayat, an endogamous, clannish institution' often plays a great role in this regards. Their dictatorial extra-judicial authority has recorded various nefarious GBV crimes in the name of maintaining the culture and sustaining the caste-patriarchal system. In many instances, they have perpetrated honor killings, ordered gang rapes, and another GBV against women and girls is undermining the criminal justice provisions [65,66].

Secondly, 'a girl honor is perceived as a delicate asset that can be preserved, even at high cost, and if a girl fails to protect herself or gets victimized, not only she loses respect but also the family, and even the entire village feels a sense of shame' [9]. Therefore, the situation is that women who get rape, for example, are being shamed and stigmatised in the community, and are usually blamed for the crime. Indeed, the process of enforcing the criminal justice system starts with victims reporting the crime [32]. Hence, this situation of shaming victims and possibly denying them the opportunity for marriage or self-actualization makes them hide cruelty for fear of alienation.

Gender hierarchy and traditional caste-patriarchal systems that further undermines the criminal justice system can be seen in the celebration of traditional festivals like 'the festival of Holi and Okali', and 'enforced and degraded widowhood' [67,68]. The celebration of Holi festival in most parts of India grants men impunity to violate women and girls. During this festival, people are often drenched each other with colored waters, get extremely intoxicated and engage in erotic play

[69]. The consequence of this is that women and girls, especially those of the lower caste, are being sexually harassed. Of course, crimes like eve teasing and throwing water balloons are even encouraged and practice. And incidences of rape and molestation have been severally recorded during these festivals, and are condoned with impunity [70].

Furthermore, arguing on those seen as the deplorable, widows, Chapman [67] observes plausibly that with over 40 million widows as at 2014, they are 'effectively de-sexualized, de-feminized, and uglified' so they cannot be attractive. But on the other hand, they are 'routinely subjected to sexual harassment and abuse by men and women within the confines of the patrilocal unit'. Indeed, Widows suffer the worst form of exploitation in contemporary India. Often, they are kept to serve in temples and shrines (dharmashalas and bhajan ashram) and are used for whatever services the 'priest or generous donors' wants, including sex. Paradoxically, if they decline, such widow(s) runs the risk of losing support, feeding or even shelter [67,71]. In effect, this practice of keeping widows in shrine and temple is still prevalent and culturally justified and condoned.

Therefore, arguments coherently rationalized above shows the intersectional pattern of relations and violence based on gender dynamics. Patriarchy has unwittingly pervaded all forms of relations, and downplays the effectiveness of the criminal justice system. It has played into the subconscious minds of all Indians, including actors responsible for criminal justice administration.

Caste-Patriarchy and Gender-Based Violence: A Case of Dalit and Adivasis Women and Girls

The Indian society is deeply rooted in 'brahmanical patriarchy' [67] which orders the society into a stricter caste system. The Caste system defines individual social status which avails them the opportunity to be either privileged or powerful in the upper strata, or being exploited, dominated or stigmatized at the lower strata. Stratification ranges from the Brahmins (priests), Kshatriyas (warriors), Vaishyas, (merchants) and Shudras (servant), and the Ati-Shudras (untouchables). The system anchors on the power to enforce castes-based duties inherent in 'graded inequality and endogamy' [68]. Whereas, at the secular level the control of power is displayed through dominance of land and social status [72]. The concept of pativrata denotes the total submission of the women and girls to men or husband seen as lords.

Though women irrespective of caste, class, religion, etc. face GBV crimes in India, but the Dalit (Scheduled Caste, SC,) and Adivasis, (Scheduled Tribes, STs) women 'make up the most disadvantaged caste' [73] living below poverty line and suffering from lack of nutrition and education, social discrimination and high levels of violence. 'The intersectional discrimination facing Dalit women on account of their poverty, gender and caste impede Dalit women's constitutional rights

to equality and access to justice' [74]. In fact, this reflects not only the inter-sectionality of gender and caste interplay but underpins the bias nature of systemic violence against the lower caste of Indian society.

The 2016 NCRB Report on Crimes in India recorded 40,801 and 6,568 reported crimes against the SC and STs Women respectively. Their level of vulnerability and inability to be protected by the criminal justice system effectively hinges on the fact that they are seen as the untouchables in the society, chattels for the upper caste men to abuse with impunity. This represents an irony in that the same women deemed as untouchables and often ostracized still become sexual tools in the hands of the upper caste men [75]. Thus, Mangubhai et al. [76] plausibly argue that the subjugation of these women becomes a conduit by which the existing social system replicate itself, as well as maintain established systemic inequality. Hence, GBV against SC and STs Women is being utilized to deprive them their rights to choices, opportunities, dignity, self-respect and development.

Murthy and Thakur [77] succinctly opines that these lower caste women are being targeted for violence and discrimination not basically because of their gender like other women in the broader picture of GBV in India. But because of their specific caste, community, religion among other factors. Their case is most pathetic because they suffer violence from three dimensions; from the dominant Hindu society, domestic offenders, and community offenders. Therefore, they 'experience endemic gender-and-caste discrimination and violence as the outcome of severely imbalanced social, economic and political power equations' [78].

Indeed, with the level of disempowerment, they are subjected to; numerous crimes committed against this class of citizens are rarely prevented by the criminal justice system. Within these caste-impunity myths, violence is often used to suppress the Dalit and other lower caste from economic and political emancipation. This impunity 'is constitutive of power in all its forms, and the relishing of impunity marks the exercise of power, rendering it desirable and attractive... it is what keeps unequal classes and gender arrangement in place' [79]. For example, the horrendous cases of abuse and violence meted on the people of Gujarat in 2002 by the Hindus community never saw the light to justice and security protection, or even health care provision for the victims because they were thought to be of the minority caste and religion [24]. Other remarkable cases of caste GBV crimes include; the Bhanwari Devi, 1992 Case, Khairlanji Case of 2006, Lalasa Devi Case of 20th March 2013 and the most recent Delta Meghwal Case of 229th March 2016 [68].

Therefore, the Dalit and other lower castes women have often been the major victims of heinous GBV crimes. But a cursory look at the number of incidences that causes public outrage will show that there is a 'selective outrage' on crimes affecting mostly the upper caste women and a 'deliberate silence' on crimes that affects Dalit women [68]. This further explains the dynamics of caste relations and dominance of the upper caste citizens in both public offices and the criminal justice system. As a result of the above, the criminal justice is

undermined because this complex scenario makes Dalit women feel among other things that they lack equal access to justice and protection of the law; violence against them is widespread and systemic; they are often disbelieved, blamed or asked to settle such matters in private; they are often intimidated or threaten when the report and the police do not protect them; perpetrators enjoys large-scale impunity, and even the court have often failed to convict perpetrators that violate Dalit women to mention a few [74]. Hence, their faith in the criminal justice system is weaned making it difficult to report violence or resort to the system for protection.

Conclusion

Conclusively, to respond to the research question 'why has the security and justice system in India failed to protect women and girls from gender-based violence?', This paper has presented two major arguments on factors responsible for the colossal failure of the of the Indian criminal justice system. These ranges from the inconsistencies within the Law itself, to the prevalent conservative patriarchal system that defines prima facie the context of GBV. In adherence to its aim, this paper has provided evidence to show that extant criminal justice architectures are gravely failing to protect women and girls from GBV crimes. The result of which has seen a continuous increase of GBV crimes in contemporary India. Ironically, the increase in GBV crimes was recorded after the Criminal Justice Amendment of 2013. This has constituted not just a challenge to national image and morality as frequently advocated but constitutes a fundamental human rights violation, human development and global health problem.

The Laws lack clarity in some parts. The Criminal Law Act fails to address the meaning of concepts like 'insult' and 'outrage to women's modesty,' in section 354 and 509 of the IPC. The wording suggests a pervasive stereotype of women who are violated and undermines their physical and mental integrity. The implication of this is that since women body are seen as symbol of honor, going to seek redress will humiliate and further expose them to alienation in society. As a result, it undermines the criminal liability of the offence committed against them. Furthermore, the vagueness associated with new offences like voyeurism and Stalking creates room for abuse without specific evidence being used to prosecute offenders. Evidently, the current inability of the police to apprehend, investigate or charge people who sexually assault women and then sell the rape videos in the streets of Uttar Pradesh for less than \$3 shows how vague these new offenses seem to be defined.

The Law is largely failing because it has created a vacuum that gives perpetrators of crimes the immunity to do so without reproach. This includes marital rape and Armed forces immunity. Further, bias formulation of GBV Laws which segregate and victimize men among others has made men feel segregated and disregard the Laws, seen as bias. It is indeed clear that the formulation of GBV Laws in India is often a reaction to public outcry and demand. This has hampered the succinct clarity of the law regarding legal interpretation. It has also made the government bow to public pressure and enacts

laws that cannot withstand basic criminal justice principles. More so, its inclusion to death penalty for sexually violent crimes has shown that the law was just an immediate reaction to public outrage without considering international legal standards.

The conservative nature of the Indian patriarchal system constitutes a major hindrance to criminal justice effectiveness [1,56]. The crux of the matter lies in the fact that Caste-patriarchy in all its forms frowns upon equal status of women, and obligatorily feels that the independence of women is antagonistic with the Indian traditional norms and values, and should be curtailed and protected even with the use of violence. Women of a lower caste have become most vulnerable for victimization. Hence, the perpetration of violence is often justified. Therefore, the Criminal Justice system is vigorously challenged by the never-ending, long-standing social norms of ancient culture that both ordinary India men, political leaders and most of the Criminal justice administrators are apologetic of. Criminal justice custodians and administrator it must be clearly noted are also Indian Men who share in these socio-cultural prejudices. This is evident in incidences of violence recorded in Gujarat, Kashmir, Punjab, and Odessa. A situation where criminal justice actor pays deaf ears to violence or demand for protection.

It must be observed that the pattern of behavior of actors responsible for delivery justice has largely hindered the intention of the Criminal Justice itself. Despite the glaring inadequacy of security provision, attitudinal predisposition of police officers, marked my gross ineptitude, insensitivity, brutality, corruption, etc. has further aggravated the problem rather than curb it. Lack of professionalism in handling cases and intimidation of victims who come to file complaint has made the police loosed the confidence and trust among the populace. Though in an attempt to restore confidence the police introduced the all-female police station and cell for special consideration for GBV crimes. However, this mechanism too has been marked with functional, operational and structural challenges that make it almost irrelevant. And often suffer same fate of hegemonic masculinity. Hence, the eminent need for social and political change on women and gender views. Socio-cultural patterns of relations need modification and women and girls' issues should be view not only as a national image and morality problem but within the wider spectrum of human security: human rights; human development; and national and global health. This may chart a new cause for overall national peace, security and development.

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