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When Rights Collide: The Legal Paradox Between the Presumption of Innocence and Survivors' Bodily Autonomy in Cases of Sexual Assault in the Global West.

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ABSTRACT

The presumption of innocence is a fundamental human right. Yet, its unlimited protection winds up undermining survivors' fundamental rights and freedoms in cases of sexual violence. This paper explored how patriarchal tendencies and victim-blaming attitudes re-victimise survivors and retroactively revoke their freedom of movement and bodily autonomy. The importance of the presumption of innocence in ensuring human dignity can, however, not be understated. The analysis highlights systemic issues in prosecuting sexual assault cases, including the placement of the burden of proof on survivors, extremely low conviction rates, and public scrutiny. It also addresses the racial disparities in wrongful convictions, emphasising the need for anti-discriminatory reforms. To balance the rights of both the accused and the survivor, the paper proposes six pathways forward: (1) regularising sentences for sex offenders, (2) implementing stricter monitoring mechanisms, (3) deconstructing the binary plaintiff-defendant dynamic in legal proceedings, (4) expanding admissible evidence, (5) prioritising the prevention of sexual violence, and (6) distinguishing between true and false allegations of rape. Overall, the paper advocates for a more victim-sensitive approach in cases of sexual violence to ensure justice and dignity for all parties.

Keywords: International law, human rights, human rights conflict, human dignity, justice, legal philosophy, patriarchy, victim blaming, re-victimisation, feminist jurisprudence, gender justice, survivors, women's rights, legal paradox, competing rights, presumption of innocence, burden of proof, due process, freedom of movement, bodily autonomy, sexual violence, prevention of sexual violence, victim protection, intersectionality, legal proceedings, legal reform, legal frameworks in sexual violence, convictions, acquittals, false allegations, wrongful convictions, racial profiling, judicial bias, trauma.

INTRODUCTION

As a global public health issue, sexual violence affects 30% of the U.S. population, 89% of whom are women [1, 2]. In the EU, police recorded 231,456 reports of sexual violence in 2022, and the European Commission found that one in three women experience physical or sexual violence at least once in their lifetime [3, 4]. Studies also show, sexual violence is so prevalent that 83% of women aged 16 to 29 avoid certain places or situations for fear of being assaulted [5]. At the same time, surveys have shown that one in five Europeans believe that women exaggerate or fabricate claims of sexual assault or that they often carry blame for provoking the assault [6]. With the majority of assaults going unreported, the incidence of rape and sexual violence carries a large dark number, which can potentially skew the statistical perspective as it interacts with the patriarchal tendencies [7] to downplay accounts of sexual violence and undermine women who come forward with such claims [8, 9]. The wrongful conviction of innocent persons is a violation of their freedom and carries life altering repercussions even after exoneration. However, with extremely low conviction rates of reported sexual assault, one could argue that the victimisation of women is a more urgent security issue than wrongful convictions. Indeed, systemic flaws within the legal system (namely, racism) are shown to carry much more weight in the conviction of innocents than the accounts of possibly fabricated rapes [10, 11]. How can we protect the rights of both the innocent and the victims without impeding on either of their fundamental rights? This paper will attempt to establish a balance between the protection of the (presumed) innocent and rape survivors by proposing victim-sensitive approaches to ensure one party's right does not undermine that of the other. To that effect, the paper reviews facts and figures on false rape allegations and wrongful convictions as well as human rights principles such as the presumption of innocence, and how exactly they are conflicting with women's rights to bodily autonomy and freedom in the global West [12].

BACKGROUND

International rape laws have been criticized for violating survivors of sexual assault a second time by forcing them to relive their trauma and putting their testimony under scrutiny in pursuit of protecting the alleged assailants from being wrongly convicted [13, 14, 15, 16]. Their re-victimisation often starts with the police interrogation which can be insulting, insensitive, and even manipulative. This will drag all the way through the trial(s) and verdict, which might explain why so many survivors choose to recant or drop their reports even after filing [17]. This in turn feeds into the narrative that most allegations of rape could be false [18].

Discussions surrounding the prosecution of rape cases have sparked intense debates regarding the balance between convicting perpetrators and safeguarding the rights of the innocent. Feminist and utilitarian approaches might prioritise the convicting of sex offenders to ensure the safety of society, even if it means accepting a margin of error in wrongful convictions [19]. Conversely, advocates of the men's rights (or #Him-Too) movements and/or procedural justice may lean more towards the upholding of the integrity of imprisonment and minimising the incidence of wrongful convictions to protect the innocent [20]. This fosters a dilemma wherein the upholding of one party's right to fair trial and presumption of innocence undermines that of the other; the assailant can only be innocent if the survivor is guilty of perjury. Since only the defendant's innocence is presumed, the legal system automatically presumes the survivor's account as a lie until it is proven truthful [21].

The emergence of the #MeToo movement allowed women to speak up against their abusers and finally be heard, bringing a wave of rape allegation claims against (powerful) men. This includes Harvey Weinstein [22] and, most recently, Nickelodeon Producer Dan Schneider [23, 24, 25]. Indeed, among these many victims of sexual assault, there were also women who had abused the newly found platform of justice for survivors by lodging false rape allegations as a form of abuse or extortion [26]. At least, that is what the discourse suggests [27, 28]. In fact, the cases most visible to the public are those with high profiles or unsuccessful complainants, as the reporting on rape cases is restricted to protect the victims [29]. The cases that make the news are cases like that of a 20 year old woman who had cheated on her partner one drunken night. When she was caught, she concocted a story of rape which her partner had her report to the police [30]. Similarly, a woman in Scotland made up rape allegations in an attempt to get a second chance at her exams [31]. Both women made headlines and ultimately served two and a half, and two years in jail respectively [32]. Such cases further exacerbate the widespread disbelief women are facing when speaking up against their abusers while also feeding into the #HimToo movement [33].

In light of sexual violence not just affecting women, but also members of the LGBTQ+ community and men, the men's rights movement, #HimToo, missed an opportunity to raise awareness of male victims of rape. An estimated 90-95% of sexual assault against male victims remains unreported, demonstrating an urgent need to address sexual violence for everyone [34]. Even so, the #HimToo movement aimed at discrediting the (mostly female) survivors who had come forward with allegations as liars [35, 36]. Regrettably, the high incidence of sexual assault is often viewed as so high that they could not possibly reflect the truth [37]. In reality, the sheer mass should actually demonstrate how severe of a public health issue sexual violence truly is.

The presumption of innocence being a clearly outlined human right is the cornerstone of all persons standing equal before the law [38, 39]. Under this presumption, the burden of proof lies with the prosecution, which in cases of sexual abuse is almost entirely reliant on the victim [40, 41]. Such that, the roles of victim-assailant are now flipped to plaintiff-defendant, wherein the legal systems prioritise the protection of the accused, hence the presumption of their innocence, over that of the (alleged) victim.

SEXUAL ASSAULT AND FALSE ALLEGATIONS

Sexual intercourse and lack of consent are key concepts for defining rape. However, perhaps a more encompassing understanding of sexual assault lies with the forceful subversion of one's bodily autonomy which is undermined through the assailant's own, sexually motivated will and the aftermath henceforth [42, 43]. This distinction is crucial because the use of 'force' is an elusive terminology that may overlook non-physical acts of persuasion or coercion such as emotional manipulation, pressure, extortion or coaxing [44]. Considering that most rape cases constitute intimate partner violence (IPV) with most survivors knowing their assailant personally, the majority of rape cases play out behind closed doors. 65-80% of incidents are thus never reported [45]. According to the US National Intimate Partner and Sexual Violence Survey Report (NISVS) of 2010, approximately half of reported rapes were perpetrated by a current or former intimate partner and about 40% by an acquaintance [46]. That said, a person known to the victim will not elicit the same response as an attack by a stranger, which further erodes their autonomy [47]. While sexual assault can cause physical injuries, it fundamentally entails the forceful appropriation of a person's body and a violent assertion of power and dominance over the victim. These are crucial, albeit non-physical, components in understanding the complexities of consent and sexual violence [48].

Subsequently, survivors of sexual assault face the disbelief of society, the legal system and even their inner circles. This is partly due to the deeply ingrained patriarchal tendencies within society that have fostered victim-blaming attitudes towards survivors [49]. The presumed innocent accused's right to fair trial winds up undermining women's rights to bodily autonomy and freedom, as engaging in 'risky' behaviour (like drinking, wearing revealing clothes or being alone in public) now becomes grounds to shift blame from the assailant onto the victim [50]. As such, a survivor will have to justify their freedom of movement, autonomy and victimhood to withstand the assailant's presumption of innocence [51].

The presumption of innocence being a crucial pillar to fundamental human rights perhaps overshadows the somewhat metaphysical structures of patriarchy. This could be a factor in the shut-down attitude towards feminist perspectives in legal discourse about sexual violence; the presumption of innocence is fundamental, while patriarchy can be tuned out, particularly when you are male [52]. Hence, it is imperative to find a way to protect both the defendants and victims without impeding on either of their fundamental rights. Unfortunately, the sexual nature of the crime predetermines that their bodily autonomy has already been injured. This renders the collection of evidence a highly sensitive post-traumatic affair [53].

With the focus shifted towards the credibility of women to protect the presumed innocence of assailants, the discourse surrounding rape suggests that the majority of rape allegations are false. However, statistical evidence suggests that only 2-10% of sexual violence allegations are actually false [54, 55, 56, 57]. False rape allegations not only risk the conviction of an innocent person, but they also feed into the scrutinous disbelief that true survivors are already facing, while wasting the time and resources of law enforcement [58]. Even with the low incidence, such false complaints need to be filtered out and analysed separately from true allegations to contain the harm they cause [59]. Notwithstanding, determining the truth in rape cases is particularly challenging for several reasons. On the one hand, most cases of rape are not a question of who committed a crime, but a matter of what crime was committed as most rapists are known to their victims [60].

An allegation is generally classified as false if the complainant's account was not entirely true; that is, they lied or made a mistake on some aspects of their recount [61]. This approach is problematic in that it dismisses cognitive and psychological effects of trauma on the victim's memory and therefore poses the

risk of classifying more allegations as false when they could still be (mostly) true [62]. Additionally, with the patriarchal tendencies to undermine and victim-blame women, victims may leave out or alter details to protect themselves from scrutiny [63]. Some researchers deem all allegations true unless they were given the no-crime label upon investigation, which accounts for 19% of rape reports [64, 65]. This approach, however, relies on the police investigation and, with rape often carrying little to no evidence, ends up dismissing merely 'hard to prove' events as fabricated [66]. Lastly, rape allegations can also be classed as false if the complainant recants their report, accounting for 48% of all reported assaults [67]. This overlooks the many complainants withdrawing their case for an array of reasons including perceived revictimisation [68].

An allegation of rape should only be classed as false when they fulfil two criteria: the complainant was not raped and they knowingly reported a rape with malicious intent [69]. Malicious intent is an important factor as there have been cases of sexual hallucination or women wrongly believing to have been raped while unconscious or intoxicated. In these cases, the allegations were not filed knowingly as false [70]. With the principle that a false allegation requires the fabrication of a story from imagination (whereas an actual victim will rely on their recollection), one can assume that false complainants will exhibit similar behaviours to liars or storytellers. This is because they construct a story based on their understandings of sexual violence and not their experience [71]. To that effect, André de Zutter et al created a prediction model to differentiate true allegations from false ones by using true and false reports filed in the Netherlands [72]. Using data by the National Unit of the Dutch National Police (NU) wherein the cases were said to be classified as false, when the investigation found that no rape had occurred, de Zutter et al noted that NU had reached these conclusions when the complainant's story had changed throughout the investigation. This was therefore not entirely fulfilling the aforementioned twofold criteria for false allegations [73]. Their study confirmed that the accounts of fabricated rape can be distinguished from true reports because their stories are built on 'unreal' mental representations and beliefs regarding sexual violence [74].

In order for a reported rape to become a conviction, the survivor needs to overcome several stages and proceedings. Over this period, nearly half of the cases are dropped or withdrawn before they can reach trial [75]. The filing of a police report initiates the criminal justice process and is followed by an investigation of the reported crime. This can include witness interrogations, collecting evidence and medical examinations to document any injuries or retrieve DNA [76]. If there is sufficient evidence, the prosecution may decide to file charges against the assailant. Henceforth, several procedures such as plea negotiations or pre-trial hearings will follow before the case may eventually go to trial, where both the prosecution and the defence will present their case to the court [77]. The judge or jury will render a verdict and sentencing after which, both parties may lodge appeals to overturn the court's decision [78]. Thus, filing a report is only one small step in a long reaching process that essentially works by discrediting the survivor's accounts because the presumption of the defendant's innocence takes precedence over believing the victim.

Already in 2015, the conviction rate for rape cases in the UK was, with 7%, the lowest in Europe [79]. However, recent data shows that this rate has only dropped since, with charges [80] brought in only 2-7% of recorded rape cases in the UK [81]. Another UK study into rape case attrition found that only 9% of rape allegations were awaiting trial and thus had not suffered from attrition [82]. Interestingly, studies have shown that rape cases investigated by the Child Protection Unit (CPU) have a 72% lower chance of suffering victim withdrawal than those investigated by standard police, which is likely due to the CPU being more victim oriented and supportive of survivors than the police [83]. Another key factor in victim withdrawal is their relationship to the assailant, with twice as many withdrawals when the assailant was a current or former intimate partner [84]. Rape Crisis Scotland (RCS) also found that of any crime type in Scotland, rape and attempted rape show the lowest conviction rates, partly due to case attrition but also due to the difficulty in proving sexual assault [85]. It is worth noting that acquitting an accused rapist does not equate to classifying the allegation as false; it can merely mean that the prosecution was not able to prove the accused's guilt beyond a reasonable doubt [86]. Generally, false rape allegations are so rare that it is said to be more likely for men to be raped than to be falsely accused of rape [87].

WRONGFUL CONVICTIONS AND THE PRESUMPTION OF INNOCENCE

The presumption of innocence, as outlined in the Human Rights Act (HRA) 1998 and in article 6(2) of the European Convention on Human Rights (ECHR) is considered a fundamental principle to safeguard the respect for human dignity and freedoms in the court of law [88, 89]. It was built on a widely accepted understanding that it is better to let a guilty person free than to convict an innocent, often expressed in the

10:1 principle which equates the harm caused by wrongly convicting one innocent person to that of letting ten guilty persons free [90]. Generally, with the burden of proof being placed on the prosecution, they are tasked with proving the charges brought against the defendant beyond a reasonable doubt, rather than having the accused prove their innocence [91, 92].

In contrast to the 10:1 principle, Larry Laudan critiques the presumption of innocence as “overly cautious” for systematically prioritising the minimisation of wrongful convictions over wrongful acquittals and, by extension, the execution of justice [93]. He argues that the wrongful acquittal of violent criminals carries an unaffordable harm to society because they tend to re-offend [94]. Referring back to statistics from 2008 in the US, Laudan found that almost 80% of violent-crime arrestees had at least one prior conviction [95]. Half of those had more than ten prior arrests for a violent crime [96]. Notwithstanding, only 55% of them ended up being convicted [97]. That is why, he affirms that the presumption of innocence of re-offenders of violent crime should be limited or lowered to reduce (dangerous) wrongful acquittals. Overall, it is, however, unclear how high recidivism rates truly are, with estimates varying between 0 and 68% for sexual abuse offenses [98]. According to Lussier et al’s review of studies from the past 7 decades, these rates are highly dependable on multiple context-based factors well beyond individual characteristics [99]. Some factors that contribute to the high variability include the type of sex crime and the timeframe within which offenders are monitored. These range from the span of a few months to 25 years, averaging on eight years [100]. Aside from the lack of a clear base rate, it is important to note that a recidivism rate does not equate a re-offense rate, considering that most sexual assaults remain unreported [101, 102].

Regardless of a re-offense risk, any such limitation of the presumption of innocence, as proposed by Laudan, is fundamentally unconstitutional and thus unlikely to be internationally accepted. To that effect, Paul Cassell attempts to find a balance between safeguarding society and the presumption of innocence alike [103]. He proposes to place alleged felons of violent crimes on longer parole periods instead with the condition not to reoffend. Then they could simply be tried for a parole violation upon re-offense, rather than for the crime itself [104]. In other words, he suggests reducing the burden of proof in cases of repeat violent offenders rather than undermining their presumption of innocence.

Accounts from wrongly convicted men show that conviction and imprisonment leave a deep mark, effectively changing the trajectory of their lives even after compensation [105, 106]. For example, Neil Miller served ten years after being wrongly convicted of rape in 1990 and was exonerated after post-conviction DNA testing proved his innocence [107].

A conviction means that a court has found the prosecution has proven the accused’s guilt beyond a reasonable doubt thereby fulfilling and overruling the presumption of innocence clause. With that, the burden of proof is shifted from the prosecution towards the convict; they have been proven guilty and now have to prove their innocence [108]. The proving of a negative, the non-occurrence of a crime, is usually not as straightforward as the proving of a positive; the convicted persons often do not have the necessary resources to carry the burden of proof when appealing wrongful convictions [109].

Miller criticises that the victim was influenced by the police officers repeatedly pressing for his resemblance to the suspect [110, 111]. The victim had stated he was not the rapist four times before finally agreeing with police, and before the emergence of DNA testing, his (common) blood type matching that of the killer was enough to settle his fate [112]. Upon his release in 2000, he was facing the public which, for a large part, did not believe him to be innocent [113].

Defence Attorney Daniel S. Kahn identified four main reasons for wrongful convictions: unreliable testimony such as jailhouse informants, false confessions, improper practices by the prosecution and eyewitness misidentification [114]. Hence, malicious false complainants make up only a fraction of wrongful convictions. The (lack of) quality of defence lawyers that are appointed to accused rapists also plays a noteworthy role in wrongful convictions [115]. Kahn advocates for States to prevent wrongful convictions as well as better compensation for the wrongly convicted after their release [116]. This includes addressing the underlying structural discrimination and police misconduct.

Indeed, the prevalence of wrongful convictions in the US is tightly linked to systemic racism, as newly emerged reports have come to show [117]. These reports, inter alia, the 2022 Race and Wrongful Convictions report by the National Registry of Exonerations (NRE) found that pre-trial DNA testing potentially saves thousands of innocents from wrongful imprisonment, most of whom are men of colour [118]. This report found that the average exoneree spends 11.6 years behind bars before being released. Most of these cases involve a Black innocent man accused of either raping a white woman or conversing with drugs [119]. With the advanced DNA technology allowing for clearing a large portion of suspects, the NRE was able to point to a steep decline of

wrongful convictions of rape over the last century with a margin of error in wrongful convictions of about 5% [120]. The findings suggest that many of the Black exonerees may have been framed or victimised by systemic misconduct by law enforcement. Over half of the exonerees registered at the NRE are Black men, and they are seven times more likely to be wrongly convicted of a serious crime than white Americans, and more than 50% more likely to face police misconduct during their prosecution [121]. In cases of rape, Black men are nearly eight times more likely to be falsely convicted than white men, and convicted rapists are up to six times more likely to be innocent when they are Black than when they are white [122]. The NRE affirms that misidentifications by victims alone do not suffice to explain the racial profiling and the disparity in wrongful convictions; they are largely obtained through deliberately ‘tainted identification procedures’ and an overrepresentation of Black men by the police in criminal proceedings.

Thomas Doswell and Marvin Anderson served 18 and 15 years respectively before being exonerated. Both misidentifications were implicitly persuaded by the police investigation. Anderson’s picture, for example, was the only coloured picture among black-and-white photographs and Doswell’s identification picture was marked with ‘R’ for rapist [123]. The degree to which these obscure tactics truly influence the witnesses’ (cognitive) decision may vary, but as it interacts with other factors (such as the ‘own race bias’ [124], implicit racism and trauma-related effects on the victim’s memory), it proves detrimental to the integrity of the investigation [125, 126]. There have been other cases wherein the police coercion of eyewitnesses or survivors was not so subtle; Anthony Broadwater initially was not the man identified as the assailant in the lineup, but the police effectively gaslit the victim and told her, she was wrong, and that he was, in fact, the perpetrator. Ultimately, they put him behind bars for over 16 years [127]. Similarly, in Jerry Lee Evans’ case, police simply told the victim who to pick. He served 22 years in prison before finally being exonerated [128]. According to the findings of the NRE, the victims or eyewitnesses deliberately lied in 75% of wrongful rape convictions under misconduct or threat by the police, whereas only two rape cases showed a deliberate misidentification without coercion by the prosecution [129].

Notwithstanding, the NRE confirms that exonerations of misidentified rape defendants have strongly declined with only two exonerations in the last twelve years, thanks to the emergence of pre-trial DNA testing [130]. These figures suggest that the prevalence of such cases may not be quite as dramatic as often portrayed in public discourse surrounding rape allegations [131]. Notably, it is not only the conviction rate that is disproportionately high for innocent Black men, but their sentences are systematically harsher than those of other social groups accused of the same crime, underscoring the urgent need to rectify systemic racism in the judicial systems [132].

FINDING A BALANCE BETWEEN CONFLICTING RIGHTS

Having established that the presumption of innocence, as fundamental as it is, undermines the bodily autonomy of survivors of sexual assault, it is important to streamline potential avenues to uphold the protection of both. For the purpose of strengthening the protection of survivors’ rights, this paper has identified six possible pathways forward. First, regularise the prison sentence for sex offenders. Second, implement stricter oversight measures to monitor sex-offenders. Third, deconstruct the traditional plaintiff-defendant dynamic to reduce the burden of proof resting on the victims. Fourth, expand admissible evidence in cases of sexual assault to include a history of abuse (if applicable). Fifth, prioritise the prevention of sexual violence by tackling the “male loneliness epidemic” and destigmatising the discourse surrounding sexual health and needs [133]. Lastly, make a clear distinction between false and true reports.

In 2021, the average prison sentence was 211 months for sexual abuse, and 190 months for criminal sexual abuse (that is rape) in the United States [134]. 15 to 20 years seems like an appropriate prison sentence for sexual abuse. At the same time, with criminally low conviction rates for sex offenders, these ‘average’ prison sentences are still rare. Just recently, a 24-year-old student was found guilty of raping a fellow student, and the judge spared him any sort of punishment, citing his “high potential” and (now still) “clean criminal record” [135]. What good is a conviction, if it does not result in a sentence let alone criminal record? And why should a survivor come forward with allegations of abuse if the judicial process not only re-victimises her but also favours the assailant’s future over her own safety and justice? That said, the punishment for sexual assault needs to be regularised, aimed at serving justice and protecting society from sex offenders. This includes tackling racial profiling and disproportionate sentencing for Black convicts as opposed to white convicts.

Cassell’s proposed extension of a parole period for acquitted violent arrestees could facilitate the conviction of sexual violence re-offenders. But then, how long can such a parole period be without overreaching

the bounds of freedom? With re-offenses becoming more likely 15 years after the offense, extending parole to that degree seems invasive if the parolee does not re-offend or may even have been innocent. Finally, could a parole violation truly warrant a substantial sentence that ensures a survivor's justice and the society's protection? Rather than enforcing monitoring of each suspect, public spaces could be better secured. Public surveillance cameras have been shown to reduce crime by up to 50% while facilitating crime control for law enforcement [136]. Seeing as a vast majority of rape plays out behind closed doors, however, this still does not necessarily protect victims from domestic violence. In such cases, the courts could mandate security footage within the home, but this may then collide with the right to privacy.

Third, to alleviate the burden of proof on survivors, it could potentially be shifted towards the State, away from the victim. To that effect, adding another entity to the binary plaintiff-defendant dynamic in cases of sexual assault might alleviate the scrutiny under which an allegation is reviewed without directly impeding the presumption of innocence. In this scenario, a survivor would bring charges of sexual assault to the State without having to face the assailant directly. The State would then bring the charges against the assailant without further implicating the victim. The State, acting as a buffer or intermediary, could ensure the care and compensation a survivor is due while also maintaining the alleged assailant's presumed innocence. The main downside of this approach is that the assailant, guilty or not, is still relatively unlikely to be convicted or sentenced. Thus, justice is not served, and the assailant will face few if any repercussions.

Fourth, admissible evidence in court largely excludes former victims a re-offender has abused; The trial is about the current survivor in question only, and other women corroborating his abusive character cannot be used against him in this trial specifically. As such, Harvey Weinstein's conviction was overturned because a testimony referred to a prior incident that was not subject to this specific trial [137]. However, a history of sexual abuse and coercion is relevant, especially to determine an assailant's pattern and character.

Fifth, legal and social systems need to prioritise the prevention of sexual violence. This entails the institutionalisation of sexual health as a human need and destigmatising the phenomenon of sexual frustrations among men. To that effect, Meike Stoverock advocates for a better regulation and acceptance of sex work as a means to alleviate today's "incel epidemic" [138]. Most importantly though, sexual and sexist violence is driven by misogynistic sentiments that shape society and judicial systems. To that effect, its eradication requires dismantling patriarchy, male dominance and the corresponding power imbalance.

Lastly, true and false allegations must be discussed completely separately. Using models, such as the one introduced by de Zutter et al, and acknowledging that hard-to-prove events are not necessarily fabrications is a first step into tackling the victim-blaming narrative [139]. Taking into account the distinctions between fabricated and real accounts of rape, one should be able to discern whether someone is a true victim or not, thereby minimising the occurrence of wrongful convictions. Finally, women who maliciously file wrong allegations must be framed in the same light as abusers, not victims, as to minimise the harm on true survivors.

CONCLUSION

The protection of innocents is as integral as the protection from physical and psychological harm. Even to those who do not subscribe to the '10:1 principle', every wrongful conviction is a violation of their fundamental freedom. However, the conviction rates of innocent people have declined more strongly than is suggested by the public discourse thanks to the advancement of investigative measures. This includes DNA testing and the (albeit slow) progression of anti-discriminatory systems and officials [140]. If a margin of error cannot be completely eradicated, it must be kept to a minimum, and the legal system must constantly work towards reducing it further.

With sexual assault being so detrimental in prevalence and repercussion, having become a global public health and security problem that affects 25% of women globally, the prevention and legal proceedings surrounding sexual violence need to be prioritised [141, 142, 143]. The key witness in sexual assault cases (if it does not escalate to femicide) is almost always the victim themselves, which puts them directly in the seat of the prosecution [144]. Not only are their traumatic memories key evidence, so too are their bodies, their clothes, their homes or scenes of crime forcing them to relive a traumatic attack all while being presumed untruthful [145]. Conversely, in murder or non-violent cases, the defendant is only facing the prosecution with no victim to corroborate the prosecutor's story. Furthermore, the presumed innocence of the alleged rapist exacerbates the violation of the victim's autonomy and dignity by retrospectively revoking their right to move and dress freely. That is because victim-blaming attitudes in society and the legal system frame 'risky' choices leading up to the attack as grounds to shift blame from the assailant onto the victim, thereby invalidating their freedom

[146]. That is why cases of sexual assault are uniquely delicate; the defendant is not the only person whose innocence and dignity are entitled to protection.

While the incidence of wrongful convictions needs to be addressed and the presumption of innocence needs to be upheld as a fundamental human right, it should be extended equally to alleged victims of sexual assault. With a refined model to determine the truthfulness of rape allegations, including prior abuses in the evidence, the ways in which the investigation and prosecution unfold need to take a more victim-sensitive approach to take women's accounts of sexual violence seriously. If someone knowingly files a false complaint, a harsher punishment should reflect a legal stance wherein malicious (false) persecution of someone is not tolerated by law. False allegations of abuse aiming to cause harm, should also not be discussed in the same scope as true allegations. Such false complainants are abusers, not victims.

In light of the difficulties prosecutors face when proving a sexual assault, the presumption of innocence will trump the truthfulness of a survivor's account more often than not, effectively rendering the incidence of acquitted rapes higher than that of wrongful convictions. To that effect, the judicial systems should consider prioritising the treatment and compensation of a victim over the punishment or sentencing of an offender to ensure that survivors are adequately treated regardless of the outcome of their case. Moreover, society needs to prioritise the prevention of sexual violence, hence the treatment of (male) sexual aggression before it escalates to assault. That way, the protection of survivors' bodily autonomy and integrity is ensured without impeding on the accused's right to fair trial. Ultimately, achieving a balance between safeguarding the rights of both the accused and the survivors remains a pivotal challenge that requires continued commitment to justice and compassion in the legal and social landscape.

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