From Epidemiology to Victimology: A Study of HIV/AIDS Affected Abandoned Housewives

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Abstract—*Epidemiologically there is extensive data available that showcases the enormity of the problem of HIV/AIDS both globally and in India. Currently, 39% of the People Living with HIV/AIDS (PLWHA) are women, accounting for one million of the 2.5 million PLWHA in India (Basanta K. Pradhan and Ramamani Sundar, 1996).However, it has not been easy to bring HIV/AIDS to the forefront and assessing its impact on women has been even more challenging. The group of women who have attracted attention of researchers are the commercial sex workers, a key population or what may be called 'the most at risk' population. Other groups of women, including housewives, have remained largely ignored as far as the impact of HIV/AIDS is concerned. This neglect of housewives with HIV/AIDS is somewhat bewildering when one discovers that one of the major focus of policy initiatives in health has been the issues regarding maternal and child mortality. There is certainly an urgent need to address the issue and it would have been a more complete programme if it would have included the HIV/AIDS infected housewives within its scope. The reasons for this exclusion, are located within the gender prejudice and discrimination that frames these women. It is essential that they themselves be placed at the center of any study and the problem be viewed from their perspective as an unconscious target, a victim of not just the disease but familial, socio-economic, legal and state policies. It is in this way that the study will try and shift the gaze from the woman from being an epidemiological subject to becoming the victim. The aim is to propose interventions to change or establish new policies to fully consider the reality that women are faced with, including legal, financial, physical and emotional impact of being HIV positive.*

1. INTRODUCTION

Family is a social institution. When the husband gets affected with HIV/AIDS, which is the primary case in most instances, he is never abandoned, till he dies. This has been corroborated in the research which also showcases a deep patriarchal bias that exists in India. The moment the disease is discovered, and it is well known that the husband is the carrier, it is still the wife who is blamed for it. The wife is a potential danger to the family and not the husband. In many cases husbands, knowingly, continue to pass on the virus to their wives. Though there are sections under Indian law, in this case specifically, the Indian Penal Code that criminalises a negligent/malignant act likely to spread infection or disease dangerous to life, this is still out of reach for many. Positive developments have taken place with new laws like the Prevention of Witch Hunting Bill, 2013 for women suffering because of witch hunting are better protected. The devadasi system was outlawed in India in 1988. Other examples include the Dowry Prohibition Act, an Act to prohibit the giving or taking of dowry. Amendments in 1984 and 1986 and finally a change in the rape laws via multiple criminal amendments after the Nirbhaya Case. However, still marital rape is not a punishable offence under law in India even today. Though there are laws to protect women, there are none to protect the HIV positive abandoned housewife. The current HIV/AIDS law covers aspects of treatment, confidentiality and adoption. Sadly, there is little focus on the rights of HIV affected women and their needs within the HIV prevention and treatment programmes. In terms of the debate around privacy and HIV/AIDS, there have been some landmark judgments where in the Courts have taken a staring stance. One of these is Mr. X versus Hospital Z in which the Courts declared that although the doctor-patient confidentiality is an important and part of the medical ethics, a patient's right to confidentiality was not enforceable in a situation where the patient is HIV positive, if he/she stood the risk of spreading it to their prospective spouse. It is in this case that the court ruled in favour of public interest and more work needs to be undertaken to understand if it is not correct that a wife be protected, especially from transmission of an untreatable disease within the marital space? The title 'From Epidemiology to Victimology: A Study of HIV/AIDS affected 'Abandoned Housewives' suggests that epidemiologywhich is an insight into a disease is also a lighthouse which exposes existing social inequities, discrimination and exclusion of certain individuals and vulnerable communities which is a

subject of victimology. The two sciences are interlinked for identifying many deficits of public policies as well as governance appropriate to a situation encountered by vulnerable communities. With a case study of HIV/AIDS affected housewives the relationship between the two disciplines can generate insight into a just framework of governance reforms.

Epidemiology, Victimology and Legal Systems in India: Impact on HIV Positive Abandoned Housewives in India

Epidemiology is the science that studies the patterns, causes, and effects of health and disease conditions in defined populations. It is the cornerstone of public health and informs policy decisions and evidence-based practice by identifying risk factors for disease and targets for preventive healthcare. Victimology is the scientific study of victimization, including the relationships between victims and offenders, victims and the criminal justice system, and victims and other social groups and institutions, such as the media, businesses, and social movements. Victimology studies victims of crimes and other forms of human rights violations that are not necessarily crime. (UNODC, 1999. p.78)

As far as the programmes for woman and child health are concerned, we find that its outcome is connected to the family including both male and female members. It is in the interest of both men and women that the deliveries are safe and hygienic, and child birth receives medical support. The Millennium Development Goals (MDGs) have invested substantial funds for the programme. The sharp focus is expected to achieve effective results and a relatively easy implementation across all nations and regions. On the other hand, the problem of HIV/AIDS affected women is generally perceived as being solely that of the affected women and does not extend to include the male and the larger family. This is an outcome of a mind-set that pins the responsibility for the infection on the affected woman. They are abandoned, insulted, stigmatized and isolated. With little support from family and availability of medical attention, these women have limited choice but to wait for death to free them from their diseased bodies. This research focuses on analysing the role of socio-legal responsibility of the state in encountering the phenomenally enlarging area of women's health and social status in an otherwise inert public health policy for women. While it is true that some attention has been given to the disease, the research attempts to establish how it has been largely limited to tracing the affected numbers and the spread of the disease rather than exploring issues related to the personal health and social location of women. The research also investigates how the comprehensive status of the HIV positive housewives cannot adequately be recognised unless till they are considered merely as a number. It is essential that they themselves be placed at the center of any study and the problem be viewed from their perspective as an unconscious target, a victim of not just the disease but the whole familial, socio-economic, legal and state policies. It also aims to discuss how while interventions through policies and laws do exist, not many of these fully consider the reality that women are faced with, including legal, financial, physical and emotional impact of being HIV positive. Victimology is based on the concept of rights, where the victim becomes the focus of the legal system and it is the victim who is ultimately to become also the receiver of compensation in the form that suits her/him. It is no surprise then that we find HIV/AIDS positive women ranging from 1 per cent in general population of antenatal cases to 14 per cent in monogamous women attending STD clinics. Many of these women are abandoned, sometimes along with young children and are left to fend for themselves. Hence, it is very important that we bring the abandoned HIV positive housewives to the center of academic analysis and investigation. It is also essential that the abandoned housewives are not the one who should be 'asking for justice'. We need to take it to them. Maybe it is time that the courts in India take suo moto action, irrespective of whether they are formally approached or not. This has been done successfully in many cases including those of missing children in India, where in 2009 the Delhi High Court had suo moto taken cognizance of newspaper reports pertaining to missing children and ordered for necessary FIRs to be lodged in all cases of missing children. Besides this, it is also important to strengthen redressal mechanisms which are easy to access as well as implement. In India, there is a need that victims become the focus of the justice system. They may either keep silent or struggle for appropriate spaces to raise concerns and seek remedies for violations of their rights, but their already disempowered status almost guarantees that it would be entirely futile.

Stigmatisation and Isolation of the HIV Positive Abandoned Housewife

Since it was first identified, HIV/AIDS has been linked with 'sexual misbehaviour' and 'promiscuity' that has led to the high level of stigma and discrimination associated with it. Womenare often even more susceptible to the stigma associated with HIV/AIDS and are frequently referred to as 'vectors', 'diseased' and even 'prostitutes. Patriarchy, social hierarchy and differential power relations blame the woman for bringing the infection into the family. Social norms, subservience in marriage, often reinforced by violence, can compromise women's ability to protect themselves, while a husband although asymptotically HIV positive often makes use of this as an opportunity to abandon his wife with HIV/AIDS and his children.

Women with HIV/AIDS struggle under the 'triple jeopardy', as the one affected by HIV/AIDS; as

a mother of children with/without the infection; and as care takers of partners and other family members with AIDS. Women living with HIV/AIDS are at particularly high risk of living a painful, shameful life of exclusion.

Framework of Victimology

As discussed previously, women in India account for 39% of all HIV infections and more than90% of these are from monogamous relationships. On the other hand, close to 30 million men buy sex for money, while there are social and cultural limits put on a woman's sexuality, under which they are asked to abstain from sex before marriage and remain monogamous after that. It is this inequality that is mirrored in

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sexual interactions and societal conducts, leading to a gross imbalance in marriages. Women have little control in circumstances where and with whom sexual intercourse takes place. As far as the housewives with HIV/AIDS are concerned, we find that there have been studies and action programmes that have surveyed and treated them as patients, but not many studies have approached them as being victims. While each woman may be struggling under a specific set of circumstances, it is also most likely that they are confronted with many common forms of subjugation rooted in the prejudice and discrimination existing in social structures. Predictably, the inequality that characterises the social and economic spheres of society is often mirrored in sexual interactions, creating an unequal balance of power in sexual relations. (NACO, 2008). Victimology focuses on those who are at the receiving end as victims. As highlighted in the chapter 'Victimology: A Theoretical Framework', Mendelsohn definesvictimity as, 'The whole of socio-bio-psychological characteristics, common to all victims ingeneral, which society wishes to prevent and fight, no matter what their determinants are (criminalsor other)'. Globally, systems of hierarchy in each society will determine how the society understands the degree of victimization which the individual suffers' (Rifai, 1979. p. 26).

Further defined by Selling and Wolfgang, an understanding of victimology is developed based on the closeness of relationship between the victim and the immediate offender (Rifai, 1979. p. 28).Any victim of a violent personal attack suffers serious losses. As a result, most societies categorise such attacks as serious crimes. Such crimes have been deemed serious enough to attract legislative and judicial sanctions. These sanctions are imposed, to some extent, to deter the danger of individual imbalances caused by violence since the victimized individual is bound to go through the destruction of mutuality and reciprocity of his/her relationships. The judicial sanctions also represent society's desire to rectify the imbalance created in the individual victims' system and compel the offender to own up the responsibility of retribution. If this is not initiated, the victim ends up suffering at the hands of the offender and under the system of justice. It is important to establish that mere retribution is an inadequate response to victimisation in select cases. Retributive justice considers proportionate punishment of the accused as the suitable response to crime. However, the key argument is that that retributive justice must go hand in hand with restorative justice and its emphasis on healing of the victim as well.

Infected women are also separated from their children, which hinders the development of a close relationship between a mother and her child. Such traumas have caused many Indian women to face depression and attempt suicide due to the shame, dishonour and embarrassment associated with HIV/AIDS. (Pradhan and Sunder, 2006. p. 108).In majority of societies globally, women have less access in terms of power and social norms to healthcare. Women internalise these issues about their health being least important in the family or within other structures they live in. Hence healthcare seeking behaviour for women is also notvery clear within the household. Seeking healthcare is tough for them except for when it comes to pregnancy, which is directly related to the man and sustaining the family culture and name. Women also, traditionally are trained to accept pain and discomfort and always are under social pressure to bear children. It is because of these deeply ingrained social challenges, that their access to healthcare, even if they gather the courage, time and money to access the same, may still not be of high quality.

The care they receive at the medical facility also determines if they will seek care again or not, as there are many instances at the healthcare delivery points which prevents them for accessing services replete with stigma.

The Vulnerability Paradigm

There is an epidemiological and social characteristic profile in countries across the globe that supports the notion of the 'vulnerable' woman and HIV/AIDS. When HIV commenced to spread, it was believed that married women are not susceptible to the virus, however as times have moved forward, one of the greatest risks to contract HIV is marriage itself. Why is this so today? This is because women globally tend to follow societal beliefs of no intercourse before marriage and loyalty to one partner. So, they automatically become susceptible to the disease due to the universal double standard and men's greater access to extramarital sex. Additionally, factors like migration and poverty were linked to showcase how the vulnerability of women increases under these circumstances. This was applied to both unmarried and married women. An example can be quoted from the work of Uli PR that has reviewed the African women' struggles with sexual partners to sustain economically and protect their personal freedom. This has been directly linked to the rise in number of HIV cases amongst this segment in Africa. (Ulin, 1992. p.48). There have been well defined arguments by feminist researchers who have stated that gender inequality puts women in unequal and often harmful gender inequality, making access to protection via condom usage very difficult, if not impossible (O'Leary, 2000. p. 88). This is turn makes them vulnerable to the spread of HIV/AIDS. Hence it can be concluded that though there are robust policies and targets achieved as well as outlined, women still in general are not able to respond using the most effective interventions and the reason can be accorded to a lack of will on the husband's or the lover's thought process and an inability to change this.

Violence against women

Globally, examples of violence against women include sexual violence, sexual harassment, and domestic violence, human trafficking and female genital mutilation. However, in multiple cases the challenge that arises is that the men could fall victim to these crimes, with no wrong doing. So it's important to define what crimes fall within the definition of 'victimhood'. In many cases, fear of violence stops women

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from asserting their basic right to sexual and reproductive health, clearly limiting their ability to protect themselves from HIV/AIDS. One of the most common and perilous forms of violence faced by women is intimate partner violence. It takes place through various forms of abuse like marital rape and coerced sex. In many parts of the world intimate partner sexual violence occurs two to eight times more frequently than violence committed by strangers and becomes a major cause of transmission of the virus. The percentage of wife beatings differ in different parts of India, yet they remain quite high with 22% of men confessing to beating their wives in rural villages in Karnataka, and75% in the lower caste communities in Punjab (F. Go et al 2008.p.80).Fear of violence may even prevent women in developing countries from disclosing their HIV status, leading to severe lack of proper healthcare. Abuse is in fact seen as an institutionalised male power to exercise control over women. It is hence key to ensure gender equality to redress and end the deep-seated violence against women.

Trajectory of law making and gender in India

The manner and history of law-making is often also in a sense the history of a country. Laws are not made on an empty state but are structured within a given constitutional, social and legal universe. This includes the social demonstrations which showcase the aspirations and expectations of people. A large part of these movements was also focused on ensuring rights of women through phases- pre-emergency and post emergency and three categories, family law, violence against women in the public and private sphere and social and economic rights.

Laws for women today are either protectionist and patriarchal, or else modern Indian women are not in a position to exercise their legal rights in meaningful ways. Notions of womanhood (chastity, innocence, self-effacement, and passiveness) continue to pervade some laws, and certainly the traditional training of lawmakers and judges allows them to bring their often-patriarchal understanding of the historical foundations of these laws to bear as precedents and jurisprudential principles, even when the laws are facially egalitarian. Below are some key laws drafted in India with an impact on women and their rights. The laws below showcase the uneven trajectory of law making, which leads us to understand that there has been a lack of focus in law in relation to sexual and reproductive freedom for women in India for a long time, especially when one views the position of the HIV positive abandoned housewife.

Legal and cultural paradigms

The UN Declaration on the Elimination of Violence against Women has defined violence against women as, 'any act of gender-based violence that results in or is likely to result in, physical, sexual, or psychological harm or suffering to women' (UNHCR, 2008).The human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, freedom of coercion, discrimination and violence.

Sadly, despite the presence of international laws and documents, violence against women exists at a large scale in the Indian society. This remains unopposed by women due to the conditioned beliefs of women being subordinate to men. It is true that nearly 75% of women interviewed in multiple studies have agreed that if they do not take care of household responsibilities, violence against them in justified(Desai, 2008, p. 68).The law in India continues to be rather vague regarding sexual violence. Acts of assault involving on-penetrative actions are covered under Section 354 (conferring punishment for outraging the modesty of a woman) and Section 509 (defining the modesty of a woman) of the Indian Penal Code (Indian Penal Code, 1860) but neither specify or describe what acts could be sexually violent. To make matters worse, these are non-cognizable offences with the offender often evading arrest and punishment by paying a negligible fine. Though Constitution of India under Article 15 prohibits discrimination on grounds of sex, there are still laws and judgments that undermine the position of women in society, especially within marriage. Promiscuity on the part of the husband is an important reason for the spread of the epidemic but the law in India does not provide the wife with coherent protection against adulterous acts of the husband. The Indian Divorce Act clearly states in Section 10 that a woman needs the man to commit adultery along with incest or bestiality to be able to divorce him, while the man can simply sue his wife for a single act of adultery. The discrimination is clear as adultery cannot be a ground exclusively for a woman to sue her husband but is enough for the husband to sue the wife. In the case of Revathi v Union of India (AIR, 1988), the Court held that the reason why a wife cannot prosecute her husband while the husband can prosecute the man who might commit adultery with his wife as he disturbs the sanctity of marital relations. The decision discriminates against the woman, treating her as man's property, without any agency or choice of sexual behaviour (Nussbaum, 2005, p. 108).

Further, the concept of restitution of conjugal rights under Hindu Law of marriage is clearly discriminatory, allowing for a woman's forcible return to her marital home. It legitimizes the use of force against the wife's will, undermines her rights and can create violent conflicts and opportunities to transmit the infection. In the case of Harvinder Kaur v Harmender Singh Chaudhary (AIR, 1984) the Court held that the remedy of restitution was not unconstitutional under both Articles 21 and Article 14 of the Constitution of India. In fact the Court elaborated to say that 'Introduction of constitutional law in the home is most inappropriate' (Nussbaum, 1995. p. 106) meaning that the domestic functioning of a house should remain away from the purview of law. It is important that we integrate women's health and women's rights together.

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In the case of housewives, this discrimination becomes more pronounced as in case of being unwell, they are dependent on their husbands or must ask for money to be treated. In many cases this acts as a deterrent as they continue to survive in deplorable conditions with a high disease load and in multiple instances violence. (Desai, 2008, p. 98).The silence around sexual intercourse and the socio-cultural codes in India discourage women to educate and protect themselves from transmission of the infection. According to the National Family Health

of HIV/AIDS and 33 percent who might have heard Survey, 60 percent of women in India have not heard of it do not know how to prevent it. If a wife discussed the use of contraception with her husband, in many cases this leads to violence, both emotional and physical, leading to the increased risk of HIV transmission, hence strengthening the belief that there is no true guarantee that monogamous women are not at the risk of the infection from their husbands. (Heise, 1995. p.120).

In multiple cases interviewed for this research, there is a common thread that the husbands were aware of the status of being HIV positive but did not inform the wife and her family. In some cases, the family of the husband was also aware but did not share this information with the wife before marriage. Hence, this led to destruction not only in the lives of the women but also their children and ultimately leading toa vicious cycle of poverty, abandonment and a life with a disease that is not curable. Hence it is important to focus on understanding the extent to which the wilful transmission of HIV/AIDS from a husband to his wife can be a punishable offence. The opinion in India is divided but various sections of the Indian Penal Code cover causing hurt, voluntarily causing hurt, causing grievous hurt and voluntarily causing grievous hurt as offences. Sections 269 and 270, which criminalise a negligent/malignant act likely to spread infection or disease dangerous to life, are most specifically applicable in the HIV context. The main elements of these offences according to the law are unlawfulness, negligence, malignancy and knowledge on the part of the accused that the actions being engaged in will cause, or are likely to cause, harm. Does India therefore need a specific criminal law to deal with the criminal transmission of HIV with the background that under due process, there must be an actus rues accompanied by some level of mens rea to constitute the crime with which the defendant is charged? Wilful transmission is probably the most serious form of criminal transmission and can be done by using needles and other routes to infect others with HIV. Additional circumstances involve a situation where HIV positive individuals have unsafe sexual intercourse with their partners. There are also cases where there is intentional transmission where a negative person expresses desire to be infected with HIV and in such cases, they have less chance to be prosecuted. In countries like India, it is the most vulnerable category consisting of women and young girls who are most at risk, given the prevailing cultural norms. These norms are shrouded in the dangerous belief systems of masculinity and patriarchy; it is particularly difficult for women who do not have and employment opportunities, like the housewives to take a stand and leave such relationships, exposing them to the exposure to HIV. In instances of marital relationships where rape and sexual force has been in play, women have reported that they acquired HIV through marriage (ARASA, 2007. p. 12). Many believe that applying criminal law to HIV transmission done wilfully will lead to women being disproportionately prosecuted. Majority of women are blamed for 'bringing HIV into the relationship' and find it impossible to negotiate safer sex or to disclose their status to a partner for fear of violence, abandonment or other negative consequences. Women may face prosecution because of their failure to disclose for valid reasons. Hence as we develop this argument to protect women from wilful transmission it is important to balance this with enforcement of laws to protect them from sexual violence and inequality in areas like inheritance, education and custody rights. It is extremely difficult to prove that an individual transmitted the infection knowingly. This is based on the understanding that there must be a proof that the infection was passed on by the HIV positive partner because they wanted to pass this on. Though this is a challenge, but we cannot allow such individuals to escape the law of the land. Sadly, in India the intentional criminal transmission of HIV has not been recognised in India. This is sad reality and there are other nations that India can learn from.

The issue is not about how likely someone is to become infected with HIV, or any other serious sexually transmitted disease or infection. It is about who gets to make the decision to exposé someone else to that chance of infection, whether it be 100% or 1%. Under Indian law, it is unclear whether a person's consent to sexual intercourse with their partner with the knowledge that the partner is HIV-positive, would be a defence available to the accused, and Sections 269 and270 do not comment on it at all. The key elements involved in this act must include the nature of the disease, that the disease is infectious and dangerous to life. The second important component is that the accused acted malignantly and third is the fact that the accused had a reason to believe that this vat will likely lead to the spread of infection.

The intention to cause harm via transmission- Actus Reus and Mens Rea

Actus Reus is defined as "An element of criminal responsibility, the wrongful act or omission that comprises the physical components of a crime. Criminal statutes generally require proof of both actus reus and mens rea on the part of a defendant to establish criminal liability (Oxford University Press, 1990. p.36)"Mens Rea is "An element of criminal responsibility, a guilty mind; a guilty or wrongful purpose; a criminal intent. Generally, it requires that the accused meant or intended to do wrong or at least knew he was doing wrong. However, the precise mental element varies from crime to crime (Oxford University Press, 1990. p.38)".

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Criminal law has a basic principle that a crime consists of both physical and mental element. Mens Rea is defined by what is the level of awareness in a person before an act in committed and Actus Reus on the other hand consist of the act itself, that is the physical element of an action. In all the above instances, the act of having sexual intercourse or injecting an infant cannot be separated from the criminal intent otherwise called mens rea. Thus, in jurisdictions with due process, there must be an actus Reus accompanied by some level of mens rea to constitute the crime with which the defendant is charged. The cases mentioned above clearly show that the defendants were fully aware of their status or the nature of the blood and had the intention to transmit the virus, either via sexual contact or injection. To prove wilful transmission, it is important that four elements of intentional of emotional distress are present which include the fact that the defendant acted recklessly, and the defendant's conduct was extreme and outrages. It is also examined on the level of distress the actions of the defendant caused to the complainant which can be severe in nature. These are important elements when a decision is made. The above cases show that the transmission of HIV and AIDS are serious concerns to the legal and medical profession and the public at large. It has been punished under several jurisdictions already and there are ongoing debates for more countries to expand their criminal law to prosecute wilful transmission of the disease. Someone who knows they are HIV positive and have not adhered to counselling and chooses to live a life that is disorganised but end up transmitting the virus to someone else should be held liable for their actions.

On the contrary, the people who are opposed to criminalisation of wilful transmission, laws for blanket criminalisation will contribute further to stigma and discrimination for people who are faced with HIV/AIDS. This also applies to not only the indusial but also families and the society at large. The larger question however remains whether knowingly passing the virus should be a crime or not. This situation needs to be examined on a case to case basis. There are clear guidelines under the International Guidelines on HIV/AIDS and Human Rights (UNAIDS, 2006) list the conditions under which the HIV status of an individual can be disclosed to third party which include: The HIV-positive person in question has been thoroughly counselled; counselling of the HIV-positive person has failed to achieve appropriate behavioural changes; the HIV-positive person has refused to notify, or consent to the notification of his/her partner(s); a real risk of HIV transmission to the partner(s) exists and the HIV-positive person is given reasonable notice. From the points above, it is amply clear that concealing HIV positive status from partner is incorrect and the information should be shared much beforehand. However, a common thread through all interviews conducted on the field was that the husband or in-laws or both were aware of the husband's HIV positive status but the same was kept hidden.

Globally, there are societies that have implemented laws that place an obligation on the HIV positive person to share the status with the person they intend to have sexual intercourse with, before indulging in the act. There are also other jurisdictions; specific laws have been enacted to make it an offence to transmit a dangerous health condition. Criminalisation of wilful transmission of HIV can be one way to contain the spread and get justice to the one harmed. However, we should remain cautioned that no law by itself can be a magic bullet and multiple efforts are needed in combination and not only limit efforts to punitive law. There is a need for an increase is education, awareness, access to health services, reducing stigma and taking law to the ones in need, like the abandoned housewife to make this process effective. In the words of South African judge and HIV activist living with the disease, Edwin Cameron, the role of the law in a public health crisis *"Should be to contain the epidemic and to mitigate its impact. The function of law should be primarily protective and "should aim to save the uninfected from infection and to protect the infected from the unjust consequences of public panic"* (Polity.org, 2010, p. 16).

No one has the right to transmit HIV. There are cases especially in the case of the abandoned housewives who contracted HIV from their husbands, with the husbands being fully aware of the infection and been on medicines for years. In such a case it is important to create a section under law to have this examined and justice be provided to the innocent woman been harmed in the marriage. Therefore, the implementation and use of the criminal law in the context of HIV transmission must be done with consideration for human rights and one central objective, to prevent the infection of individuals and spreading this infection further.

Role of the Judiciary in Evolving the Law- Legal Cases and Precedents

Internationally one of the most important judgments on the criminal transmission of HIV is R. v. Cuerrier, in the Supreme Court of Canada, which deals specifically with the issue of consent in a case regarding criminal transmission and in this case it was ruled that a partner cannot truly give informed consent if the other fails to disclose their HIV status.

Some countries view the act of infecting a person with HIV as first-degree murder, as in the case of Ugandan-born Johnson Aziga under Canadian law. In 2011, Johnson Aziga was convicted of murder due to transmission of HIV to persons without knowledge of his infection by an Ontario court ruled against him stating that Aziga could not be trusted that he will in fact disclose his status to future partners. He was declared to be a dangerous offender, a tag that can put person in prison indefinitely with a history of deception. Aziga was the first person to be convicted of murder through spread of HIV. He had unprotected sex with 11 women without telling them that he has HIV, a fact the defendant agreed to in court. Seven of the women became infected, two dying of AIDS-related

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cancers. Mr. Aziga admitted he had unprotected sex with the women without disclosing his illness,

but maintains he could not know for sure that he was the one who infected them. The Brian Stewart case was different from other cases stated above, wherein Brian Stewart infected his 11-month-old son with contaminated blood when the baby was receiving treatment in hospital for pneumonia and asthma. In 1999, he was convicted of first-degree assault and was awarded life sentence and imprisonment. The reason behind the sentence was stated to be that he avoided paying child maintenance to support his son (New York Times, 1998.p.3).

2. CONCLUSION

It is essential to have a framework which includes understanding the societal nature of the epidemic than simply focusing of economic and scientific issues. Human rights concerns related to HIV/AIDS must be addressed with policies, programmes and a legal system for the ones most in need. It is important that laws that discriminate against people with HIV/AIDS be repealed and laws against discrimination be added. However, law is not enough, as it needs to be supplemented with right resecting policies for real change to come through. A human rights approach to HIV/AIDS prevention and treatment is vital to the success of the struggle, and it should be continued and strengthened. International agencies and governments across the world need to prioritise the needs of the marginalised and in the focus should be included one who are HIV positive and abandoned out of marriage, monogamous marriages were they had no to little say in decisions. Law and policies that discriminate against women, make same sex punishable and fail to address the needs of the HIV population need to be re-examined.

REFERENCES

[1] Desai, Sapna. 2008. HIV and Domestic Violence: *Intersections in the Lives of Married Women in India, Emerging Issues in HIV/AIDS* http://www.jstor.org/stable/4065337 (last access December 12, 2018)

[2] Harvinder Kaur versus Harmender Singh Chaudhary, AIR 1984 Delhi 667. https://indiankanoon.org/doc/191703/ (last access June 16, 2018)

[3] Idasa. 2010. *Criminalisation of wilful transmission of HIV: sitting on the fence?* http://www.polity.org.za/article/criminalisation-of-wilful-transmission-of-hiv-sitting-on-thefence-2010-11-10 (last access March 6, 2018)

[4] Indian Penal Code. 1860. https://www.oecd.org/site/adboecdanticorruptioninitiative/46814358.pdf (last access May 12, 2018)

[5] L.Heise. 1993. Violence Against Women: The Missing Agenda. In: Marge Koblinsky, Judith

[6] Timyan and Jill Gay (eds.) *The Health of Women: A Global Perspective* (Westview Press, San Francisco: Boulder and Oxford)

[7] National AIDS Control Organisation & National Institute of Medical Statistics, ICMR. 2015. *India*

[8] *HIV Estimations 2015: Technical Report. Ministry of Health & Family Welfare, Government of India* http://www.naco.gov.in/sites/default/files/India%20HIV%20Estimations%202015.pdf. (last access July 18, 2018)

[9] New York Times. *Man Accused of Injecting H.I.V. in Son* http://www.nytimes.com/1998/12/04/us/man-accused-of-injecting- hiv-in-son.html (last access March 19, 2018)

[10] Nussbaum, Martha. 2005. India, Sex Equality and Constitutional Law. In: Beverley Baines, Ruth Rubio-Marin (eds.) *The Gender of Constitutional Jurisprudence* (UK: Cambridge University Press)

[11] O'Leary A. Women at risk for HIV from a primary partner: balancing risk and intimacy. https://www.ncbi.nlm.nih.gov/pubmed/11351832 (last access June 18, 2018)

[12] Pradhan Basanta K. and Sundar, Ramani (2006) Gender Impact of HIV and AIDS in India (Government of India National AIDS Control Organisation: Ministry of Health and Family Welfare)

[13] Pradhan, Basanta K., Sundar, Ramani and Shalabh K. Singh. 2006. *Socio-Economic Impact of HIV in India* (India: UNDP)

[14] Report on the ARASA/OSISA *Civil Society Consultative Meeting on the Criminalisation of the Wilful Transmission of HIV*. 2007. (Johannesburg, South Africa)

[15] Revathi versus Union of India, AIR 1988 SC 838. https://indiankanoon.org/doc/921415/ (last access June 14, 2018)

[16] Ulin PR. *African women and AIDS: negotiating behavioral change.*

[17] https://www.ncbi.nlm.nih.gov/pubmed/1738858 (last access March 18, 2018)
UNAIDS. 2006. *Report on the Global AIDS Epidemic: a UNAIDS 10th Anniversary Special Edition*. (Geneva: UNAIDS)

[18] United Nations High Commissioner for Human Rights and Joint UN Programme on HIV/AIDS. 1996. *Second International Consultation on HIV/AIDS and Human Rights* http://data.unaids.org/publications/irc-pub02/jc520-humanrights_en.pdf (last access July 20, 2018)

[19] United Nations Office on Drugs and Crime. 2006. *Handbook on Restorative justice programmes.*

[20] *Criminal Justice Handbook Series.* United Nations. New York.

[21] https://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf (last access January 14, 2019)

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