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RESEARCH PAPER

# Rape, deterrence and rehabilitation: a need to relook the policy discourse

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**Abstract** Two judges of the Supreme Court, Justice Lodha and Justice Lokur, in August 2013, instructed all the states of India to frame a relief and rehabilitation scheme for rape victims. Undoubtedly, this was a vital step to ensure women's well-being as a woman rape victim often faces several violations of rights. The rape of a woman within marriage and outside marriage destroys her dignity and reproductive rights, and makes her susceptible to sexually transmitted diseases. This study was undertaken in two states of India to understand the link between marital rape, rape and HIV. It found that women who contracted HIV infection due to rape faced several social, economic and health problems, and yet received no rehabilitation support from the state. In this context, the instruction of the Supreme Court demanding the provision of compensation and rehabilitation to all rape victims needs to be followed by the reconsideration of the already existing discourse on law against rape, and the sensitive handling of rape victims who may also be HIV positive. There is an immediate need of provisioning sexual and reproductive health care services for rape survivors, and to ensure that rehabilitation schemes are accessible to every female victim in the society.

**Keywords** Rape · Violence · Rights · HIV · Rehabilitation

## Woes of rape: impact on women's health

Rape is one of the most prominent crimes against women in India. The reported rape cases in India have doubled between 1990 and 2008, yet there is an abysmally low rate of conviction for the rape cases in the country reported by National Crime Records Bureau

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(NCRB 2011). In 2011, out of the total number of cases that went to court, the overall rate of convictions was 26.4 per cent, as 4072 convictions were upheld, while 11,351 of the accused were acquitted. These also included pending cases from previous years. Of late, although the law against rape has become more stringent in view of the recommendations of the Justice Verma Committee report, the incidence of rapes and violence against women have not reduced.[1] There also remained a high possibility that due to social, economic, political and legal constraints, many cases went unnoticed and were often unregistered. This is primarily due to the fear of stigma, police and judicial harassment, lack of financial support and lack of information regarding relief, as a result, victimised people[2] are restrained from lodging a First Information Report (FIR) in police stations. Furthermore, the data on rape are the ones which are reported, and most importantly, which do not include marital rape. According to a 1996 survey, which covered 6902 men in the state of Uttar Pradesh, around 45% of men acknowledged that they were physically and sexually abusing their wives (UNICEF 2000).

The issue of marital rape, however, has not found much place in the public discourse. The Criminal Law (Amendment) Bill, 2012 did not include marital rape, and when the bill became a law with an amendment, marital rape was still not considered as rape. The Indian Penal Code (IPC),[3]that got amended in 2013, has used the issue of marital rape under its exceptional clause, and states that sexual intercourse of a man with his own wife, when the wife is not under 15 years of age, is not rape. The law remains gender biased, opening up avenues to further humiliation and trauma for the already marginalised section in society. The case of marital rape curbs women's sexual and reproductive rights. Women should have equal rights to decide about their own sexual and reproductive choices, but marital rape limits the rights and dignity of women. When the law has exempted marital rape, and has failed in implementing the laws against the rape, it further legitimises the male aggressive power and violence of man over women. In the process, the exclusion of marital rape further strengthens the norms of the patriarchal society (Agnes 2013a, b; Narrain and Arvind 2012; Singh 2015).

Rape in general, and marital rape in particular, have several socio-psychological and health implications. Rape victims are persistently vulnerable to health risks such as physical wounds, gynaecological trauma or wounds,[4] unwanted pregnancy, abortion, STD/STI, HIV/AIDS, psychological trauma leading to coma and in worst cases, death (Stones

[1] According to NCRB data, there is a gradual increase in the number of rapes reported in India—from 24,923 in 2012 to 33,707 in 2013. The report also records that Madhya Pradesh had the maximum number of rapes in 2013 among all other states, with 4335.

[2] Dalit women who were raped in Maharashtra faced seclusion and public apathy in comparison with a non-dalit girl raped in Delhi which received countrywide anger of the people (Teltumbde 2013). Another study by women against sexual violence and repression, published in 2015 stated how in recent times, there have been increasing cases of rape of dalit girls by the Jat community (upper caste) in the state of Haryana.

[3] According to the Section 376 (1) whoever, commits rape, shall be punished with rigorous imprisonment of their description for a term which shall not be less than 7 years, but which may extend to imprisonment for life, and shall also be liable to fine. Section 376 A states that whoever commits an offense punishable under 376 (1 and 2) and in the course of such commission inflicts an injury which causes the death of a woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than 20 years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life or with death.

[4] A study conducted by Campbell and Alford (1989) in American society focused on several kinds of sexual trauma and sexual health problems such as bladder infections, vaginal bleeding, anal bleeding, leaking of urine, missed menstrual periods, miscarriages and stillbirths, unwanted pregnancies, infertility, and sexually transmitted diseases, and so on, which were faced by women because of marital rape.

and Moss 2013; Rege et al. 2014). Apart from the direct health risks, the survivors of rape face indirect health risks, and stigmatisation which puts women into depression, and gravely jeopardised their sense of well-being. While marital rape is often perceived by the rape victims to be a normal way of life, rape outside marriage is seen as loss of purity and integrity of the body. The rape of a person, and especially (in illegitimate sphere[5]) of a woman, shatters the life of an individual in multifarious ways. The rape survivor who had already faced a great deal of trauma, further faces social stigma and rejection. As survivors, however, they need diverse social, psychological and most importantly economic aid, and are entitled to be rehabilitated adequately, and fight for their dignity and justice. Although the health implications of rape are known and discussed, health risks arising due to marital rape are largely kept hidden. The dominant discourse against rape has also largely neglected the issue of marital rape. Marital rape has severe socio-psychological implications, but experiences are either expressed very secretly or never disclosed at all. Marital rape, which is often not considered as a crime either by society or the legal system, also contributes towards the determination of the health of the woman. When a woman is raped within a legal or legitimate sphere, or within the socially accepted realm of intimate relationships, and as a result also gets infected with HIV/AIDS, it becomes all the more necessary to understand the contested areas of marital rape. The issue of rape adjoined with rehabilitation matters need to be debated and understood in a much more nuanced way.

With this backdrop, the objective of the present study is to understand the implication of rape on women survivors. Additionally, the paper also aims at discussing the rape of women both within intimate relationship or marital life, and rape outside the marriage, to understand its possible association to the HIV infection. A discourse analysis of the law against rape, policies pertaining to HIV/AIDS and rape are undertaken here. Lastly, the proposed rehabilitation scheme is analysed to observe the challenges and implementation gaps inherent in the existing policy and scheme.

The paper is divided into seven sections. After a brief introduction to the issue, the subsequent section describes the methodology for the study. The third section highlights the debates around laws, legal procedures and issues around rape in India. The fourth section, while analysing the nature of intimate relationships experienced by women respondents, intends to find out the association between marital rape and HIV. The fifth section discusses rape cases that took place outside marriage and their implication towards HIV/AIDS, followed by a subsequent section on the understanding of the health policy and HIV/AIDS Intervention Programmes in India in the context of rape. The seventh section concludes with discussing some measures of deterrence to rape, and rehabilitation.

[5] The illegitimate sphere is where a sexual relationship is not affirmed by social norms, and in addition, sexual relationships take place without the consent of the girl or woman. The relationship here could be between individuals other than husband and wife. Several kinds of relationships that could take place are between father and a daughter, sister and brother in law, uncle and niece, etc. It also represents some forceful and non-consensual sexual relationships, often called as rape which takes place outside the home without having any prior social relationship between two or more than two people. This study focuses on hetero-sexual couples. In the Indian state and society, the relationship between same sex couples is considered to be illegitimate or illegal, which is also highly debatable. This study, however, does not include homosexuals or transgenders.

## Methodology

The study is based on both primary and secondary data sources. Primary data were collected through in-depth interviews, focused group discussions, observations and government data. The secondary data were generated through secondary published reports, policy documents, journals and periodicals. Two states were selected, namely Karnataka and West Bengal, on the basis of the prevalence rate of HIV/AIDS. Karnataka is among the high-risk states and West Bengal is one of the low-risk states. In Karnataka and West Bengal, there were 39,078 and 7499 people detected with HIV positive virus, respectively (till 31st January 2006).

Since it is extremely difficult to interview HIV positive men or women within the family, due to the inherent privacy issues, samples have been drawn from institutions. A list of hospitals based in Bangalore and Kolkata i.e. public, and NGO led-hospitals or community-based health centres was prepared, where HIV positive people were treated. Three government hospitals were selected from this list. Similarly, from a list of civil society organisation supported care centres, two care centres/hospitals from each state were selected. In the next step, from the above selected institutions, a hundred women from each state were selected through a convenience sample, and subsequently through snow ball sampling. For the field study, an ethical committee clearance in both the states was undertaken. Along with that a prior informed consent of HIV positive women was taken before the interview. In addition, in all the cases, their original name was changed to provide them anonymity, and preserve their privacy. The qualitative data were coded and were given quantitative codes, and with the help of the SPSS, the frequency and percentage distribution were analysed.

## The discourse of rape in India

Rape is a widely prevalent social malaise, and it is not merely restricted to Indian society. Russell (1984) indicated that in America the incidence of rape of women, including marital rape of women who were 18 and older women, was 44%. Sociologist feminist writers have emphasised how rape and the fear of rape produce and reproduce the patriarchal social system, by sustaining the female subservience to males (Walby 1989). There are several scholars who adopted the structural model to explain rape. According to this school of thought, rape is seen as a form of male violence that acts as a mechanism of social control (Brownmiller 1975; Kelly 1988; Menon 2012; Agnes 2013a, b; Chakravarthy 2003; and Baxi 2009). Menon stated that rape could be considered as an instrument of violence exercised to establish control and male supremacy over women. Chakravarthy, and Baxi have stated that within the Indian state, rape is also used as an instrument of oppression by the high caste male or the upper caste non-tribal male over the lower class, lower caste or tribal women. Rape is also used as a weapon of political and social vengeance by the dominant religious groups against the minorities (Menon 2012). Scholars such as Matoesian (1993); Thornhill and Palmer (2000); and McKibbin et al. (2008) had adopted an inter-personal and behavioural or evolutionary perspective to understand the causes of rape in a society, and they argued that rapists are abnormal and they suffer from various psychological ailments and mental illness, uncontrollable sexual impulses, and are sick individuals.

Laws against rape in India have not been constant over the years but have been changing. The Indian state followed the law against rape under the Indian Penal Code 1860. However, the discourse on rape in India received immense prominence during the late 1970s, following the rape of a young girl called Mathura. She was raped by two policemen on 26 March 1972. During that time she was between 14 and 16 years old. The Sessions Court gave a judgment against the victim on 1 June 1974. The court stated that because Mathura was 'habituated to sexual intercourse', her consent was voluntary. Under the circumstances only sexual intercourse could be proved and not rape. On appeal, the Bombay High Court rejected the judgment of the Sessions Court, sentenced the accused to 1 and 5 years' imprisonment, respectively. However, in September 1979, the Supreme Court of India in the judgment on *Tukaram vs. State of Maharashtra* reversed the High Court ruling and acquitted the accused policemen. The Supreme Court held that Mathura had raised no alarm during rape, and also that there was no visible mark of any injury on her, thereby suggesting no resistance, and therefore no rape. The judge noted, 'Because she was used to sex, she might have incited the cops (they were drunk on duty) to have intercourse with her'.

Following the judgement in 1979, four law professors wrote an open letter protesting the concept of consent in the judgment. 'Consent involves submission, but the converse is not necessarily true. From the facts of the case, all that is established is submission, and not consent. Is the taboo against pre-marital sex so strong as to provide a license to Indian police to rape young girls?' In addition to the open letter, a few women's organisations and feminist groups such as 'Forum Against Rape' organised widespread protests and demonstrations across states in demand of a review of the judgement. Although the courts did not change its stand on Mathura's case, this eventually led to the amendment of the rape law (Kumar 1993).

The Criminal Law (Amendment) Act 1983 (No 46), made a statutory provision to Section 114 (A) of the Evidence Act 1983, which states that if the victim says that she did not consent to sexual intercourse, the Court shall presume that she did not consent. Section 376 (punishment for rape) of the Indian Penal Code underwent a change with the enactment, and the additions of Section 376 (A), Section 376 (B), Section 376 (C), and Section 376 (D), were made. Further, to define custodial rape, the amendment shifted the burden of proof from the accuser to the accused. Once rape takes place, it also added the prohibition against disclosing the identity of the victim, and made the punishment more stringent.

The Indian Penal Code stated that 'a man is said to commit rape who have sexual intercourse[6] with a woman under circumstances falling under any of the following six descriptions: (1) Against her Will (2) Without her consent, (3) With her consent, but when her consent has been obtained by putting her or any person in whom she is interested in fear, or of hurt, (4) With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married; (5) With her consent, when, at the time of giving such consent, by reason of unsoundness of mind, or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and the consequences of that to which she gives reason. (6) With or without her consent, when she is under 16 years of age'.

In India, a close analysis of the discourse of laws, judicial trials and judgments, have indicated that they revolve round critical issues such as consent, the age of the victim and

[6] Explanation: Penetration is sufficient to constitute the sexual intercourse necessary for the offence of rape.

compromise. The rape law had constituted a medicalisation dimension to itself. The colonial practice focused on the technique of the two-finger test which was usually carried out to determine the scientific evidence of the consensual heterosexual experience over the body surface of the victim. The medical test was legitimised to find out some marks of stiff resistance (Kolsky 2010). It is this old medicalised form of consent and falsity that is applied to know the truth, over the body of women. As part of the rape trial, some medico-legal terminologies were also used such as 'habituated to sex', 'partial penetration' and 'technical rape'. Here the medical knowledge as power acted over the body of the woman to produce testimony in favour or against her own claim of victimhood and survival. Based on the two-finger test and on the basis of the medical report, a lawyer brings up the past sexual history of the woman to discuss in the court room (now no longer relevant during the trial). The woman's sexuality associated with the term 'habituated to sex' usually helped in transforming the testimony of rape into a statement of consensual sex.

The Indian Penal Code Section 375 was further modified in the light of the Nirbhaya case followed by the recommendations of the Justice Verma Committee report. The committee submitted its report on 23 January 2013. The report reiterated that 'under the IPC, sexual intercourse without consent is prohibited'. However, an exception to the offence of rape exists in relation to un-consented sexual intercourse by a husband upon a wife. A rapist remains a rapist regardless of his relationship with the victim (p 114). The Verma Committee recommended that 'the exception to marital rape should be removed. Marital or other relationship between the perpetrator and the victim is not a valid defence against the crime of rape or sexual violence' (p 117). It mentioned that marriage should not be considered as an irrevocable consent to sexual acts. Therefore, with regard to an inquiry about 'whether the complainant consented to the sexual activity, the relationship between the victim and the accused should not be relevant'. The Committee[7] was of the view that rape and sexual assault are not merely crimes of passion but an expression of power. Even after following the recommendations of the Committee, the Indian judicial system remained apathetic towards marital rape. The Criminal Law (Amendment) Act, 2013, has not included marital rape as an offence if the wife is 15 years and above. As far as marital rape is concerned, the sexual act has been considered as legal or considered as 'not rape'. The sexual act is illegal if the wife is below 15 years old. The legitimacy provided to marital rape is instrumental in conceptualising the female body as the property of the husband, meant for the exclusive use of the husband (Sinha 2014). The current law that allows marital sex when the girl is 15 years old also contradicts its own principles of the age of consent i.e. 18 years old, and also the legal age of marriage of a woman. It further neglects severe implications of marital rape[8] that could be fatal for women.

A UK-based study by Bennett, Draper and Frith (2000) argues that there is a need for a law against sexual violence in terms of marital sex, and also to call it rape. They state that

[7] The Verma Committee recommendations were based on the issue of women's reproductive rights, i.e. respecting and upholding the complete right of a woman over her body. The law excluded marital rape and refused to amend the permission required to prosecute armed personnel in regions under AFSPA or other special laws, the government has retained the exceptions. 'The new ordinance is clearly not founded on correct principles and continues to treat women as subordinate to husbands or the armed forces' Shakil (2013).

[8] In a tragic event that took place over 125 years ago in West Bengal, Phulmani, a 11-year-old girl had died after the brutal marital rape by her 35-year-old husband. This led to the debate on increasing the age of consent for sexual intercourse for a girl from 10 to 12 years. The Act was opposed by some of India's prominent leaders of that time, and the Age of the Consent Act was passed only in 1891 (The Hindu newspaper, 10 June 2015).

the criminalisation of marital rape has practical problems of enforcement. Prosecution for rape within marriage is also relatively difficult to prove. However, 'by putting into place legislation of criminalising such an act, not only can justice be seen to be done in at least a few cases, but also an important message spread about the absolute wrongness of rape within marriage is established'.

The Criminal Law (Amendment) Act, 2013, ensured quicker trial and enhanced the punishment for criminals guilty of sexual assaults against women. The law against rape became stringent while covering different sexually offensive activities. In relation to sexual offences, the following changes have been brought out on rape: Section 375. A man is said to have committed 'rape' if he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman, or makes her to do so with him or any other person; or manipulates any part of the body of a woman. It considers rape taking place in five similar conditions as mentioned above to the IPC Act 375 (Please see page no 6, Paragraph 4). But there is a change in the sixth condition '(Sixthly), with or without her consent, when she is under 18 years of age' and there is also a new addition of the conditions, (seventhly), 'when she is unable to communicate consent'. The amended Act under the Indian Evidence Act 1872, Section 53 A, 'evidence of character or previous sexual experience' used in the context of rape trials, is declared to be not relevant. The amended law bars the use of sexual history in determining the consent of woman and bars cross examination as the way to prove the general immoral character of the victim. If the victim states in the court that she did not give her consent, the court will presume that it is so.

Although compromise in rape cases is illegal, in most of the cases where a trial on rape takes place, it is settled, and or compromised (Berti 2010; Baxi 2014). In such cases the trial is curtailed, or the witness turns hostile. There are several cases that depict the grim consequences on women who are raped, who are assaulted, murdered or were forced to commit suicide by the men who raped them, and because they refused to compromise. Most importantly, in every day legal discourse, the compromised cases are declared to be false cases (Baxi 2014), where rape never took place.

## Intimate relationship: marital rape and HIV/AIDS

Within the legitimate[9] sphere, at a personal level, rape never became an issue, and it was often perceived as a normal practice. Power remains more effective when it is least observable and shapes the perception of the individuals (Lukes 2005). Within the marital relationship and especially in a male dominated society, women's subjectivity is normalised in such a way that the masculine power constantly works either bluntly or in disguise. In a private sphere, the masculine power is more aggressive and penetrating than in the public sphere, as the force of power remains invisible.

Within the intimate relationship of the husband and wife, the dominance of the husband in almost all kinds of decision making regarding sexuality and sexual life can lead to force, dominance and violence. Within the sexual politics, the husband exercises greater power, and such dominant power often leads to marital rape. Jewkes et al. (2010), indicate that power inequality within intimate relationships and intimate partner violence increase the risk of HIV

[9] The legitimate sphere is where the sexual contact between two persons, preferably heterogeneous couples is consensual, takes place, in conformity with social norms, it is basically the relationship between a husband and a wife. However, when the intimate relationship takes place against the willingness of the woman within the so-called legitimate relationship, that is, considered as rape or marital rape.

infection among women. It was found that men who were often sexually violent[10] with their partners were more likely to be infected with HIV and pass on the infection to their partners. It was also found that women who were exposed to sex at an early age were more likely to have HIV. In India, a large section of women are being forced to get married at an early age, and thus, they remain vulnerable to the HIV infection (Johnston 2003; UNAIDS 2000).

The present section, using primary data from two Indian states of Karnataka and Bengal, focuses on understanding the nature of the intimate relationship faced by women, and lists the experiences of marital rape faced by a female, with the aim to understand its association with the HIV infection. The socio-economic features of the selected women indicate that all the respondents in Karnataka who were infected with HIV were married, and in West Bengal four respondents were unmarried (Table 1). In terms of the age distribution, more than 75% of women were in the age group of 22–35 years, i.e. well within the reproductive age. Most of the respondents were poor, and a considerable number of respondents (i.e. 53% in Karnataka and 48% in Bengal), were from urban areas with a large proportion being literate.[11] More than 65% of the respondents were earning below 3000 rupees a month. Only a little over 10% of the respondents in both the states had an income of over Rs. 6000 a month.

The results drawn from the primary data show that in the case of more than 50% of the respondents, the marital relationship was forceful, violent and dominant[12] (Table 2). Actions of this nature within such an intimate relationship when faced by women were considered as marital rape. A direct implication of the trend was that if a man's sexuality simultaneously operated within the marital relationship as well as outside it, then the chance of sexual health hazards for women was likely be magnified. In a study undertaken in South Africa, it was found that men who have often been physically violent to their partners on more than one occasion were more likely to have HIV, and passed on the infection to their intimate partner as well (Jewkes et al. 2009).

In the case of 11 HIV positive respondents, it was the male partner who knowingly and deliberately (refusing to use a condom or through forceful and violent sex, as narrated by the respondents) had passed on the HIV infection to their wives within the so-called legitimate sphere of relationship. Through an understanding of the primary data based on the narratives of women, a surprising aspect, was found that in Karnataka 67% as against 59% in West Bengal who had faced marital rape were hardly conscious of their oppression, the concept of marital rape, or their rights pertaining to sexuality.[13]

If one considers the respondent's source of HIV infection, it becomes further pertinent that in 77% of the cases in Karnataka as against 73% of the cases in West Bengal, the respondents had been infected by their husbands, and in a large number of cases also had been victims of marital rape (in Karnataka 67% as against 59% in West Bengal). Even within a legitimate marital relationship, women often faced oppression and violent sexuality from their partners. It was found that husbands ill-treated and suppressed respondents in both the states. In Karnataka, 49% of husbands were found to have coercive/forceful and

[10] The word was not included in early set the questionnaire. The questionnaire had a qualitative question to explain the nature of sexual life she experiences on her day to day basis. Many respondentds themselves explained that they faced violence, whereby their intimate partners used to beat them profusly, bite them leding to bleeding in different parts of their body and so on.

[11] The literate are people who know how to write their name, alphabets and numbers.

[12] The behaviour of a husband was defined to be forceful and dominant when he gave no opportunity to his wife to express her consent or objection to issues pertaining to the sexual act, as well as the space and timing of the act. Violent husbands are those who exercised physical violence during the sexual act.

[13] A few could articulate several rights related to sexuality.

**Table 1** Socio-economic profile of HIV positive women in Karnataka and West Bengal *Source* Primary data (collected by author)

| Variables | Indicators | Karnataka | Bengal |
|---|---|---|---|
| Marriage | Percentage of respondents married | 100.00 | 96.00 |
| Age | Percentage of respondents falling within the age group of 22–35 | 76.00 | 75.00 |
| Rural or urban | Percentage of respondents from urban location | 53.00 | 48.00 |
| Economic independence | Percentage of respondents independent (Working) | 55.00 | 52.00 |
| Respondents' income | Percentage of respondents' income per month below Rs 3000 | 65 | 67 |
| Literacy rate | Percentage of literate among the respondents | 82.00 | 64.00 |

**Table 2** Respondents' opinions about their husbands' sexual behaviour *Source* Primary Data collected by the author

| Opinion | Karnataka ($N = 100$) Percentage | Bengal ($N = 96$) |
|---|---|---|
| Force and dominant | 49.00 | 45.83 |
| Violence | 18.00 | 13.54 |
| Cooperative | 33.00 | 40.62 |
| Total | 100.00 | 100.00 |

dominant relationships with their spouses (respondents) as against 45% in Bengal.[14] In around 33% of the cases in Karnataka and 41% in Bengal, the behaviour of husbands was found to be cooperative.[15] The findings show that the nature of marital relationships has a positive relationship with the HIV infection of the women. The marital relationship of the respondents in West Bengal was relatively better than in Karnataka. All other relationships were marked by violence and physical coercion (among 67% in Karnataka and 59% in West Bengal where the relationship was forceful, violent and dominant). As the macro level, state-wise data shows in Bengal, 6.2% of women had faced sexual violence during 2005–2006 (see footnote 10), whereas in Karnataka, for the same time period, sexual violence experienced by women was 0.2%, which was lower than women facing sexual violence in West Bengal. These violent sexual relationships experienced by women were within the marital relationship. But, our study found that relatively more respondents, i.e. 18% women respondents had faced sexual violence in Karnataka, and 13.54% in West Bengal.[16] This could be indicative of a correlation between a sexually violent marital life

[14] One may suggest that the lower rate of HIV prevalance in West Bengal as compared to Karnataka is because of lower number of women faced forceful and violenct sexual relations, although, the difference is not very large.

[15] A 'cooperative' husband always respects his wife's opinion. A woman gets freedom to express her opinion and choices related to sexuality, and she often gets a chance to decide over the household and other related affairs as well.

[16] The National Family Health Survey data are large-scale data drawn from several thousands of people, and presents a macro picture. However, the macro data have their own limitations. They may lack in-depth or rigorous efforts to bring out detailed experiences of any case or sample. Being quantitative in nature, NFHS data may fail to capture the complete picture. In contrast, although this study is based on a relatively small sample of 100 women in each state, it has made an effort at in-depth detailing of cases. While using qualitative methods such as case study, this study has taken the case histories or comprehensive records and has focused on issues related to women's experiences.

and HIV infection, i.e. those women who were exposed to sexual violence were likely or prone to be HIV infected. In West Bengal, women (respondents) reported having better marital relationship in terms of cooperation, less violence, and less forceful/dominance relationship than in Karnataka. As mentioned above, a considerable number i.e. more than 80% of the women respondents who faced forceful, violent sexual life in both the states indicated that such intimate relationships were often not to their liking, yet they considered it as normal practice to acquiesce. Although 70% out of 200 HIV positive women were undoubtedly infected by their husbands, in most of these households, the women were blamed and were accused of being the source of the infection. Around 50% of respondents were blamed to be the source of infection. The case study given below highlights marital rape faced by a woman and the consequences.

## A case of the marital rape leading to HIV infection

Smitha (name changed), a 26-year-old woman is HIV positive . Her husband died in the year 2007 due to AIDS. She has been staying in Bangalore. After her husband's death she started handicraft work, for which she used to earn Rs. 2000 rupees per month. She has a 7 year old daughter. She said Rs. 2000 per month was insufficient to meet the basic needs and to maintain the health of herself and her HIV negative daughter.

For all the pain that she has borne, she blamed her husband who was a driver, and she cursed him after his death. She said that her husband infected her consciously and forcibly. She said her husband had extramarital affairs. He had sexual diseases and infections, and in the past she had requested her husband to use condoms, but he did not listen to her. In the year 2005, after 3 years of marriage, her husband underwent some medical check-up, but did not disclose the results (diseases) of the medical tests to her. Subsequently, she got infected with STD (sexually transmitted diseases) and started having other health problems. Her husband often used to engage in forceful and violent sex with her. She said, 'with sexual illness, it was very difficult to bear the torture', but she could not deny her husband the relationship. Despite her unwillingness for unsafe sex, her husband raped her several times. She could not reveal her personal problems to any relative, and bore the pain, and was infected with HIV. The cultural acceptance[17] of marital rape made her life more miserable.

If those who knowingly put their sexual partners at risk of HIV infection, without any prior warning to them, such behaviour is unacceptable, and should be regarded as a crime by the law, along with marital rape (Bennett et al. 2000).

[17] The article by Waetjen and Maré (2010) discusses a rape trial of a HIV positive woman in South Africa. They argue that the trial consistently focused on women's question as a private matter: debates about relations between men and women came to focus on issues of propriety, behaviour and etiquette, rather than on questions about rights and power. The trial also highlighted how the politics of culture ignored gender rights, and as a result could not highlight the challenges of sexual violence and correlation of the high rate of HIV prevalence and sexual violence in South Africa.

## Rape outside marriage and HIV

Among these respondents, there were two unmarried girls and one married woman from West Bengal and Karnataka, respectively, who had contracted HIV infection through a rape that took place in the illegitimate[18] spheres (Table 3). It was discovered that following the rapes the girls developed serious psychological complications, and one of the girls in Karnataka remained in a vegetative state, after which she was admitted in a hospital for 3 months. When she recovered, and found out that she was HIV positive, she considered that 'there is no meaning and value in living such a life'. In all the above-mentioned cases of rape, and particularly the three cases where women were raped in an illegitimate sphere in the selected states, they did not receive any relief, or help from the government. Besides, since they lived with HIV, they also faced several types of stigma and discrimination. The case of Durga (name changed) highlights the serious implications of rape victims outside marriage. In West Bengal too, one of the rape victims in this sample, remained unconscious for almost one and a half years. All the rape victims (outside marriage) were in a state of deep shock, and faced the continuing fear of stigma, and were worried about their health condition.

### A case study of a rape victim in an illegitimate sphere in West Bengal

The girl called Durga (name changed), who was a rape victim in Bengal, described her experience as given below. She was then a 23-year-old girl and was from a lower middle class family. She said that when she was 20 years old she had joined the first year of the B.A programme. Along with having high career aspirations, she also had developed the 'fantasy for love life' in her mind. In the process, she developed a friendship with a boy. He was interested in more than friendship, but did not have any emotional feeling or love for her, and she was not willing to accept him as her boyfriend. She said *Sudhir* (name changed), *amar bhalo bandhu chhilo, bandhur age kichi chhilo hi na* (she could never think of him as more than just a friend). One day within a month of her friendship, she decided to explain it clearly to Sudhir. Thereafter, she also thought the friendship could be continued normally. It indeed continued calmly for some days. She could get no sense that her denial to a possible love relationship with Sudhir could make him so violent '*pasur matun* (to the level of an animal)'. One day (on the occasion of Durga's birthday), Sudhir invited Durga to his place where he said that he had organised a birthday party. Initially, she was reluctant, but when Sudhir became persuasive, with the permission of her parents Durga decided to go to Sudhir's place to attend the party. When she reached his place there were only Sudhir's roommates along with Sudhir (he was staying in a one room rented house along with four other friends). She enquired about other friends, and Sudhir instantly said that they will join soon. However, they immediately caught her tight, closed her mouth with a towel and they gang raped her for the entire day. While undergoing the violence, because of the incident, she went into coma and remained in that state for 1 year and she remembers nothing that happened to her thereafter. When she became semi-conscious, she could hardly recognise a few people. Her brain functioned only partially and she was

[18] The illegitimate sphere is essentially where sexual relationships are not affirmed by social norms. In adition, these sexual relationships take place without the consent of the girl or woman. The relationships here could be between individuals other than husband and wife. Several kind of relationships that could take place are for example between father and a daughter, sister and brother in law, uncle and niece, etc. However, although the relationship between same sex couples is considered to be illegitimate or illegal in Indian soicety, this study does not include homosexuals or transgenders. The argument is specifically confined to hetrosexual relations.

**Table 3** Source of infection of the respondents *Source* Primary Data

| Source of infection | Karnataka ($N = 100$) Per cent | Bengal ($N = 100$) |
|---|---|---|
| No knowledge | 02.00 | 02.00 |
| Blood transfusion | 02.00 | 11.00 |
| Sex work | 14.00 | 11.00 |
| Husband (Includes Marital Rape) | 77.00 | 73.00 |
| Extra/pre-marital affair | 04.00 | 01.00 |
| Rape in the illegitimate sphere | 01.00 | 02.00 |
| Total | 100.00 | 100.00 |

shocked to the extent that she could hardly be normal. She remained in the hospital for another 7–8 months, and had recovered only recently. She thanked the doctor of the Calcutta Medical College who helped bring her back to life. She was also thankful to the counsellor for building her mental order. Recently, she also came to know that she had become HIV positive due to the rape. While in tears, she said her life had no meaning for her but she wanted to live for her parents as she was the only daughter, and throughout her pain and trauma, her father and mother stood beside her with the hope to see their daughter living a normal life. She said her father told her that even with HIV, people could live normal life. So, she said now, as her parents have undergone so much of trauma, she cannot disappoint them. Durga contemplateed why that she was targeted and how she could get justice, given the fact that she herself was struggling hard to come back to normalcy. In the entire process of her hospitalisation, she could get no government help. The doctor of the government medical college was a good human being because of whom she could recover. At least she did not face any discrimination or stigma at the hospital as a rape victim and as a HIV patient. She said she was fortunate that there were people who were sympathetic to her, and moreover, for most of the time she was not even in a normal mental condition.

## A case study of the rape victim in an illegitimate sphere, in Karnataka

S. Manashi (name changed), who had two children and was staying with her parents along with her kids was raped by an unknown person when she was returning home after completing her daily work. She was from a poor family. After marriage, she started working as a domestic help in a few houses. She mentioned that it is difficult for her to forget the day when she was returning home situated in a Mysore slum area. Just few miles away from her home, she was dragged by an unknown drunken man and despite resistance, she was brutally raped. Followed by the incidence, she became senseless and remained unconscious for more than 3 months. Her husband visited her regularly for 2 months (as told by her son). But after knowing that she was infected with HIV, he stopped coming to the clinic. It was only her parents and her kids who were there to care for her. However, after recovering from coma, especially as an HIV positive person, she required a lot of money not only for her treatment but also for managing the expenses of her children. Although her parents were caring, they were too poor to afford the expenses. She mentioned that the incidence of the rape took her life away (she said life of a rape victim and life of a HIV positive woman was equal to having no life). She also yelled that the lives of

her children were also ruined because of the trauma that she had faced. She said 'why was she punished? She had no clue about the rehabilitation, following the rape, when she was unconscious. Her family members, however, had not filed a case in the police station, although she was keen to file an FIR. Even after 3 months of her rape, she had no clue about the procedure. The case study highlights the lack of awareness among the poor about the laws and procedures that are in existence to help HIV/rape victims.

## HIV intervention programmes in India, and rape

The very act of rape victimises a woman to a great extent, often making her vulnerable to health problems including HIV. In such a situation, however, the national AIDS policy in 2002, and the national AIDS control programmes,[19] including the most recent NACP-IV, have not included the issue of rape under any of its programme components.[20] Power relations between men and women take multiple forms in India, and they are commonly manifested as, and imposed through, sexual violence and assault. It is, therefore, recommended that reproductive health care programmes including programmes on HIV/AIDS need to be formulated in such a manner that it can question the gender inequality and high prevalence of male violence (Wood and Jewkes 1997). From the primary study, it was evident that marital rape and other forms of rape have a positive association with several health implications, the most important being HIV infection. Unless policies and programmes address the issue of rape (while also including the marital rape cases) adequately, HIV control and rehabilitation programmes will remain inadequately addressed.

The national rehabilitation scheme designed for rape victims as described by Agnes (2013a) faces discrepancies at the ground level, coupled with the lack of centre and state coordination, in making relief available to rape victims. The rehabilitation scheme entitles a victim to receive an amount of rupees 2–3 lakh as monetary support, if the victim is infected with a STD and/or HIV/AIDS as a consequence of rape. The national board has the power to provide for enhanced relief subject to a maximum of Rs. 3 lakh. As a rape outcome, a HIV positive person is entitled to get higher compensation or relief, which is a desirable step. However, as far as the ground reality[21] is concerned, those women who were raped in the illegitimate sphere remained unaware of any rehabilitation measure. Although all those women were in need of financial support and other rehabilitation needs, they had no idea of such schemes. Women who faced marital rape and were infected with the HIV by their husbands, were not treated as rape victims, and thus received no rehabilitation. The rape victims hardly received (non-marital rape cases at least) any financial

[19] The National AIDS Control Organisation (NACO), 2014, has superficially mentioned in its website under Women: India Scenario, that 'violence against women and HIV/AIDS continue to be inextricably linked: rape, incest, assault by family members or friends, violence in the course of trafficking or at workplace expose them to HIV infection'. However, NACO has taken no steps to link the issue of rape in its policy or programme level. NACO did not discuss the issue of marital rape at all.

[20] South Africa is a highly gender unequal society, where an estimated 1.3 million rapes take place each year, and it is also the country with the highest prevalence of HIV/AIDS (Wood and Jewkes, 1997). One can strongly argue here that rape is one of the important contributing factors towards the increasing rate of HIV infection.

[21] There can be several functional difficulties in implementing this provision. For the rape victims who are also HIV positive, it may be problematic if their HIV status is disclosed by any public authority, as they may face severe stigma and discrimination. It is, therefore, essential for the committee to be sensitive and ensure confidentiality while allocating relief to HIV positive rape victims. The scheme also has a flaw as it does not include marital rape under the definition of rape.

or other rehabilitation support.[22] The national relief or rehabilitation scheme is not beneficial to women who were infected by their husbands, though marital rape is not a recognised offence under the law. Many women, including 17 respondents in Karnataka and 25 in Bengal, were sent out of their homes, and many such women and widows faced a grim life of poverty and helplessness in their personal life. Since marital rape never became an issue of debate, a concern either in the public or in the private sphere, it was hardly seen as a problem that is so closely related to HIV/AIDS. Therefore, rehabilitation measures of any kind were never provided to such rape victims. There is inadequate consideration of the issue of HIV infection through marital rape, and no special attention is given through the existing policy and programmes on HIV/AIDS to address the dual vulnerability of women.

## Conclusion: rape, deterrence and rehabilitation

In India, there has been high incidence of rape and violence against women which is evident from the NCRB report. Rape, both within the legitimate sphere of married relationships, or outside the marital relationships and especially within illegitimate relationships, acts as a means through which male power is exercised directly over the female body and against her choice. As found from the empirical study, the rape victims face stigma and discrimination, and develop persistent vulnerability to health risks such as physical wounds, gynaecological trauma or wounds, unwanted pregnancy, abortion, STD/STI, HIV/AIDS. The associated trauma at times leads to coma, and in worst cases, death.

As far as the law and policy discourses related to rape are concerned, the Criminal Law (Amendment) Act, 2013 does not consider marital sexual acts as rape if the wife is 15 years and above. The very act of rape victimises a woman to a great extent, and often makes women contract HIV/AIDS. In this backdrop, the national AIDS policy, and the national AIDS control programmes including the most recent NACP-IV, have not included rape under any of its programme components. In addition, the national rehabilitation scheme for rape by default excludes marital rape victims.

The primary data indicate that more than 45% cases in both the states of Karnataka and Bengal faced forceful and violent sex in their marital life. In the case of 11 HIV positive respondents, it was the male partner who knowingly and deliberately (refusing the use of condoms or through forceful and violent sex) had passed on the HIV infection to their wives, within the so-called legitimate sphere of relationships. However, within the legitimate sphere (i.e. between husband and wife), at an intimate level, no sexual act was defined as rape, or described as such by the large number of respondents who faced it, where sex was seen as the *right of a husband*, and one has to accept it. In addition to the gender socialisation towards acceptance of marital rape as being within 'normal' practice,

[22] The revised scheme envisioned financial aid and rehabilitative services, 'on an application filed by the victim of rape, or by any person or organisation on her behalf'. After the Delhi gang rape in December 2012, nationwide protests by activists (Shakil 2013) demanded concrete implementation of the scheme, but execution of the scheme remained very inadequate as there were no funds earmarked for it, by either the state or central governments. The Nirbhaya fund was constituted after the Delhi gang rape and announced during the budget in 2016. This fund has 1000 crores for the safety and empowerment of women. But no one is clear what that is for, or how it is to be disbursed (Shetty 2013). The Nirbhaya fund, which was instituted by the UPA government in 2013, was carried forward by Finance Minister Jaitley last year. However, in the 3 years after it was created, just 288 crore rupees out of the 3000 crores have been spent from it in 2015–2016.

the provisioning of consent to marital rape by the Criminal Law makes it further difficult to understand the crime and its implications, such as trauma, psychological disorder, ill-health and HIV.

The primary data also revealed that no one could get any relief or rehabilitations as rape victims, even in some cases where they had been abandoned by their family. In the case of four respondents who were raped outside marriage and were infected by HIV/AIDS, they faced severe socio-psychological as well as physical maladies. In two cases, their health needs were addressed by the government hospital, and their families who largely bore the entire responsibility of finances. However, in all the cases, rehabilitation for the victims was not provided and no relief was given to the rape victims. Survivors of rape many a time showed great courage and determination to overcome the trauma that they had to undergo. But there are several challenges that make the socio-economic integration difficult for them. There is a need to provide adequate aid for the victims to normalise their lives. Provisioning of health care on a priority basis, essential rehabilitation, free long-term counselling, adequate compensation, free physical and psychological therapy, social security, free education and gainful employment opportunities are some of the prerequisites for all the rape victims. What is more important for the governments is to plan the rehabilitation schemes in such a way that the victims automatically become a part of the socio-economic development process through ensuring adequate education, economic independence and overall development.

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