

Sexual violence within marriage in India: Evidence from service records of a hospital-based crisis counselling centre



Introduction

58%

of domestic violence survivors reported facing sexual violence from their husband

Sexual violence within marriage is not limited to rape/forced sexual intercourse but also includes **reproductive coercion**

Exception 2 to Section 375 of the IPC, 1860, that "sexual intercourse by a man with his own adult wife, is not rape", is referred to as marital rape exception (MRE) as it removes marital rape from punishable rape law

Sexual violence within marriage is common and manifests in various forms. Marital rape, reproductive coercion, insertion of objects into the vagina or anus, and withholding sexual pleasure are forms routinely experienced by women in marital relationship. All of these have serious physical and mental health consequences and violate women's sexual and, reproductive health rights. Sexual violence in marriages results in adverse outcomes such as women's inability to negotiate condom use or contraception, and their higher vulnerability to HIV/AIDS and other sexually transmitted infections^{1,2,3}. The recent National Family Health Survey (NFHS- 5, 2019-20) found that about 29% of ever-married women of age 18-49 have ever experienced spousal physical and/or sexual violence⁴.

Despite this, the Indian law doesn't recognise sexual violence by husbands. Thus, the Exception 2 to Section 375 of the Indian Penal Code which exempts rape by husband is a contravention of constitutional and international guarantees. The exception condones and normalises non-consensual sexual intercourse within marriage. It is based on the notion that there is implied and irrevocable consent to sexual intercourse by women in marital relationships⁵.

Based on an analysis of service records of a hospital-based crisis counselling centre- *Dilaasa*, this fact sheet describes the experiences of women facing sexual violence in marriage, how these women come in contact with the health system, and the response they receive from the health system and police. It argues against the marital rape exception (MRE) in criminal law and posits how a sensitive response from the health system can enable access to services for survivors of marital rape.

¹ Silverman, J. G. (2010). Key to prevent HIV in women: reduce gender-based violence. *The Lancet*, 376(9734), 6–7. [https://doi.org/10.1016/S0140-6736\(10\)60971-3](https://doi.org/10.1016/S0140-6736(10)60971-3)

² Chan, R. L. & Martin, S. L. (2009). Physical and sexual violence and subsequent contraception use among reproductive-aged women. *Contraception*, 80(3), 276–281. <https://doi.org/10.1016/j.contraception.2009.02.012>

³ Stephenson, R., Koenig, M. A., Acharya, R., & Roy, T. K. (2008). Domestic violence, contraceptive use, and unwanted pregnancy in rural India. *Studies in Family Planning*, 39(3), 177–186. <https://doi.org/10.1111/j.1728-4465.2008.165.x>

⁴ International Institute for Population Sciences (IIPS) and ICF. (2021). *National Family Health Survey (NFHS-5), 2019-20*. Mumbai: IIPS.

⁵ Gupta, B. & Gupta, M. (2013). Marital rape: current legal framework in India and the need for change. *Galgotias Journal of Legal Studies*, 1(1).

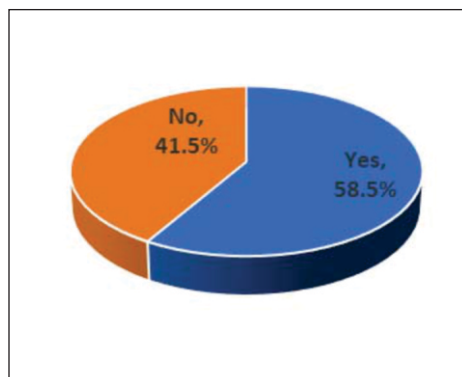
Methodology

Dilaasa was started in 2001 as a joint initiative of the Centre for Enquiry Into Health and Allied Themes (CEHAT) and the Mumbai Corporation of Greater Mumbai (MCGM). Training of healthcare providers to respond sensitively to survivors of violence and provision of crisis intervention services are the two key components of *Dilaasa*. The service records analysed include counselling records of survivors of domestic and sexual violence and medico-legal forms of examination and treatment of sexual violence survivors.

Table 1. Details about data analysed

Source of data	Pathway to Dilaasa	Time Period	Number of cases	Analysis
Counselling records of survivors who reported domestic violence	Women disclosed marital rape to counsellors while seeking support for domestic violence	April 2008 to March 2017	828	Profile of survivors who disclosed sexual violence while seeking domestic violence services from the counsellor, their experiences of violence, consequences on health, and coping mechanisms.
Medico-legal forms of all survivors who reported sexual violence from an intimate partner	Women came to the hospital with a complaint of marital rape	April 2008 to March 2017	18	Profile of survivors, the types of sexual violence reported, the pathways through which these survivors reached the hospital, and their experience of seeking justice

Figure 1. Ever married women reporting sexual violence by the husband to the counsellor



N= 828

Domestic violence survivors reporting sexual violence to counsellors

Most often women first disclose physical, financial and emotional violence to a counsellor. Once trust is established, women feel comfortable about sharing their experience of sexual violence with the counsellor.

Profile of women

At the hospital-based counselling centre, of a total of 1783 women registered during the period 2008-2017, 79.4% (1416) were currently married. Of the currently married women (1416), 58.5% (828) women reported experiencing sexual violence from their husbands. The majority of women were young, with 80% being in the age group of 18-35 years.

Figure 2. Pathway to Dilaasa (N= 828)

Pathway to Dilaasa

Forty-one percent (339) of the women were referred to *Dilaasa* by healthcare providers as they had come to the hospital for treatment of health complaints as a result of ongoing violence. The health complaints of women ranged from physical assault reported by 46%, attempted suicide by 28%, reproductive health complaints by 25% and attempted homicide by 1%. The remaining women were referred to Dilaasa by ex-clients, family members, and police, and self-referred after reading information, education and communication (IEC) material.

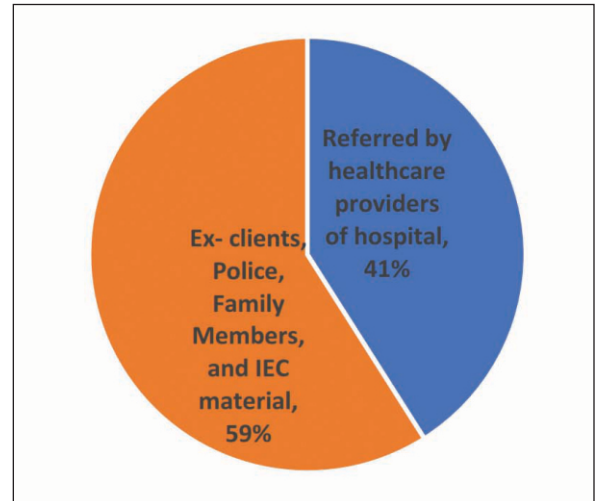
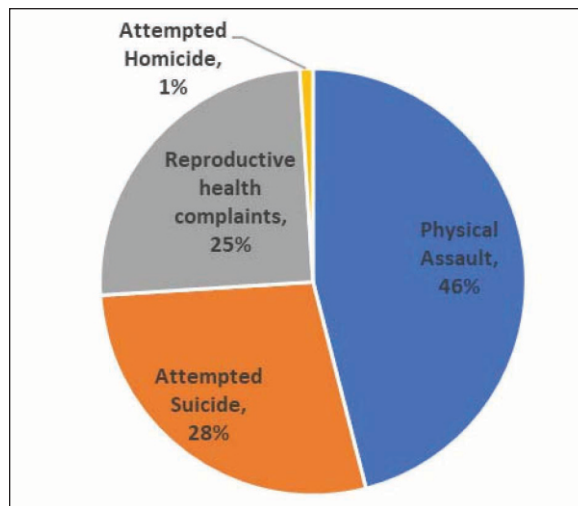


Figure 3. Health complaints of women referred to Dilaasa by healthcare providers (N= 828)

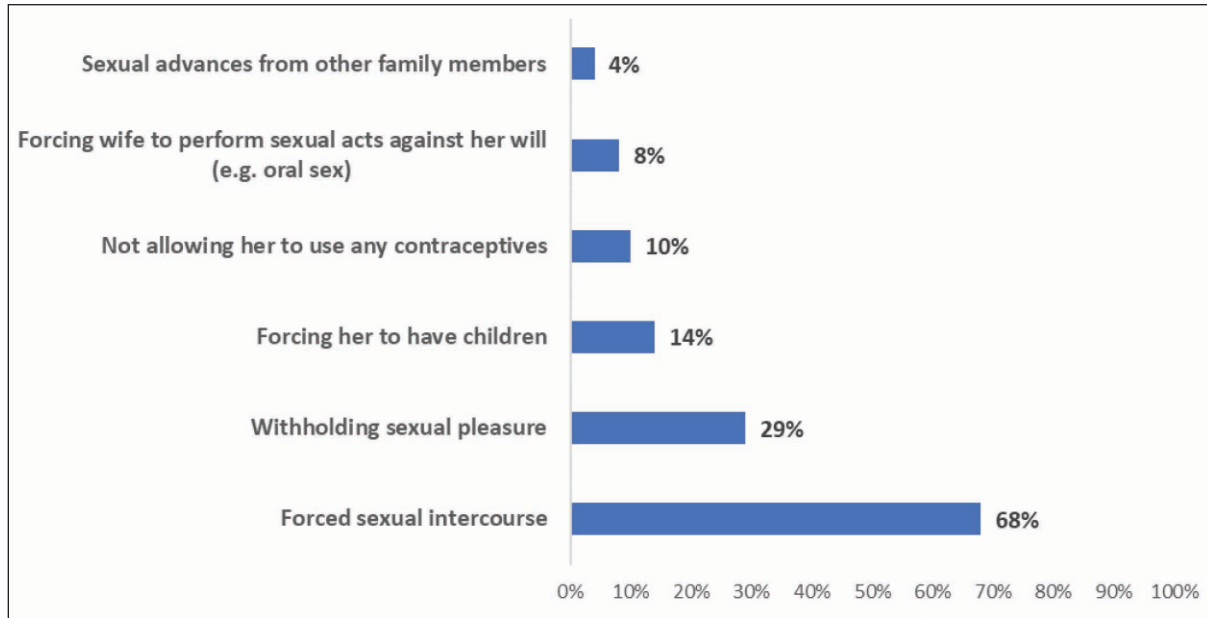


Forms of violence

The history of violence revealed that 91% of women had been experiencing violence since marriage. Women experiencing sexual violence from their husbands reported facing different forms of domestic violence from husband- emotional violence (100%), physical violence (92%) and financial violence (92%).

Women reported several forms of sexual violence in addition to forced sexual intercourse (Figure 4). 24% of women reported reproductive coercion as the husband refused to use any contraceptive and also prohibited her use. 4% of women reported facing sexual violence from the husband's relatives. Women also complained of being forced into oral and anal sex against their wishes and having sexual acts forced on them against their will, including acts that they found repulsive. 29% of women reported husbands' withholding of sexual pleasure. Their husbands either had other partners or were going to sex workers, and the women shared that lack of sexual relations was painful for them and was difficult to talk about to anyone.

Figure 4. Forms of sexual violence disclosed to a counsellor

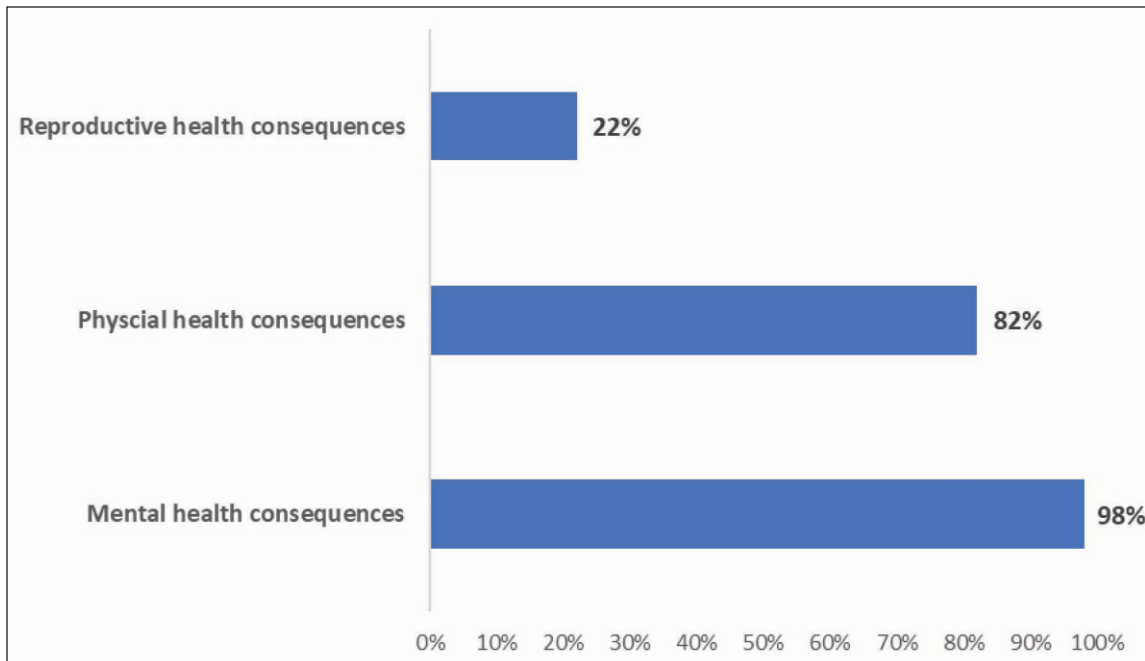


The chart is based on an analysis of 828 cases in which women confided with counsellors about sexual violence during marriage.

Health consequences

The impact of ongoing abuse on the physical and mental health of survivors was assessed by counsellors. Physical health consequences such as injuries were reported by 82% of women while reproductive health problems like abortion, miscarriage, RTIs, and prolapse of the uterus were reported by 22% of women. Mental health consequences were reported by 98% of women, among whom 26% had attempted to end their life while 29.4% reported thoughts of ending life (suicidal ideation).

Figure 5. Health consequences of sexual violence reported by women to counsellors



The chart is based on an analysis of 828 cases in which women confided counsellors about sexual violence during marriage

Physical health consequences

82% women suffered injuries

Reproductive health consequences

22% women reported abortion, miscarriage, RTIs, and prolapse of the uterus

Mental health consequences

72% women experienced nervousness

36% women felt afraid all the time

26% women attempted suicide

48%

women sought help from police for the ongoing domestic violence and the police registered a non-cognisable offence, i.e. an entry in a police diary that does not warrant any investigation

18 women reported marital rape and came to hospital for seeking medico-legal support

10 women came to hospital to seek treatment for injuries due to rape while **8** women were brought to hospital by Police

13 women out of 18 were in the age from 23 to 30.

10 women out of 18 were separated from husbands when they came to hospital.

Women reporting marital rape to the hospitals: analysis of medico-legal forms of survivors of rape

Based on the data from three public hospitals in Mumbai, from 2008 to 2017, of 1664 rape survivors, 18 women reported marital rape and sought medico-legal support.

Profile of women

Women reporting marital rape were mostly young. Thirteen were in their twenties, and five were in their 30s. Of the 18 women, eight were residing with their husbands and ten were separated from their husbands due to severe violence. Those currently living with their husbands were married for a year or two.

Pathway to hospital

Ten women reported directly to the hospital, and police brought in eight (Table 2). The women who reported to the hospital directly had been raped in the previous one to five days. These women suffered injuries and came to the hospital for treatment. One of these women was pregnant when she had been raped. Of those brought by police, the incident occurred two to three days back in one case, and two to six months ago for the remainder. As there were ongoing threats of rape or physical assault or attempts at rape by the husband, the women wanted to file a case of rape.

Table 2. Pathway of the women who reported marital rape to hospital

Women reporting marital rape to hospital	Marital status	How women reached the hospital?
10	Physical separation from husband	Reached hospital directly
8	Living with husband	Brought by police

The women who were separated from their partners said that the husbands had either come to meet them at their residence on the pretext of asking for forgiveness or meeting the children. They had then raped them, or assaulted the women on the roads and dragged them home before raping them.

“In one such case, a woman (22-year-old) has been living separately from her husband due to sexual abuse, physical violence and demands for money. When she was going back home from the office, her husband caught her and asked for money, had sex with her forcefully and put kerosene on her. She suffered burns and reached the hospital for treatment”. (From service record of a 22- year-old survivor)

Women currently married and living with their partners had been experiencing domestic violence for one or two years. The incident of sexual violence reported by them was not the first incident they had experienced, but the consequences of such repeated acts pushed them to seek support. In one case, a 20-year woman married for six months came to the hospital after sustaining several injuries. She disclosed to the doctor that her husband would have sex violently with her.

“A 21-year-old survivor married for a year said that her husband injected a syringe of blood in her back when she was pregnant, which she suspects to be HIV-positive blood. She came to the hospital for a medical check-up and abortion. She disclosed that her husband had been inserting pens and bottles in her vagina, throwing chili powder, and forcing her to watch pornographic material on the mobile”. (From service record of a 21- year-old survivor)

Two women had been raped by their husbands several times, but they reported the recent incident after the husband threatened to rape their child or relative.

Forms of sexual violence and health consequences (N= 18)

- Forced peno-vaginal oral and anal intercourse,
- Inserting materials like rods, bottles, chilli powder in the vagina
- Forcing women to watch pornographic material

- Women came to hospital to get treatment for
- Vaginal/anal injuries,
 - Bruises
 - Bite marks

Response of police to marital rape

All 18 women contacted the police either directly or after the medico-legal examination at the hospital. Women reported that they had been kept waiting for a long time at the police station as the police did not know what to do in cases where women reported rape by their husbands. For those who had reached the police first, such delay caused loss of medical evidence and delay in accessing medical care, causing further agony to the survivor.

For two of the ten separated or divorced women, the police had registered domestic violence cases under the Indian Penal Code (IPC) 498A and/or IPC 377, but none had filed a rape caseⁱ. The police were not aware of the amendments to rape law that recognised sexual violence by the husband who was separated or divorced as rapeⁱⁱ. The current law criminalises any form of sexual intercourse by the husband with his wife during a period of separation, as provided under section 376B of the Indian Penal Code, 1860.

Of the eight women who were currently living with their husbands, the police noted the complaint and brought three women to the hospital but did not register a First Information Report (FIR)ⁱⁱⁱ as the perpetrator of rape was the husband. The inadequate police response is of concern as all the women had suffered severe violence. The least that the police should have done was record a cognisable offence or an FIR and ensured immediate medical care and examination of the survivors.

Response of health workers to marital rape

Women narrated their experience of violence to the examining doctor. Whether they came directly to the hospital or were brought by police, the hospital followed the protocol mandated by the MoHFW for examination, treatment, and evidence collection of victims/survivors of sexual violence. The health workers had registered a medico-legal case documenting the history as told by the survivor. They followed due procedure without any debate around whether a “rape pro forma” should be filled or not.

It is important to note that such a response is not a routine but an exception in Indian public hospital settings. The study hospitals have been following a Standard Operating Procedure since 2008 and receive technical support such as training, supervision and monitoring of the quality of response to survivors of rape from CEHAT.

ⁱ These are sections under criminal law.

ⁱⁱ The forms of marital rape included forced peno-vaginal and anal intercourse, inserting materials like rods, bottles, chilli powder in the vagina, forced oral sex and forcing women to watch pornographic material. Women reported experiencing physical assault along with sexual violence. Thus, women came to hospital to get treatment for vaginal/anal injuries, bruises and bite marks on the body.

ⁱⁱⁱ First Information Report (FIR) is a “written document prepared by the police when they receive information about the commission of a cognisable offence” (Indian Law Watch).

However, this is not the practice in most other health facilities in the city or other parts of India, where providers are not trained to respond sensitively to cases of sexual violence. The difficult experience of one of the survivors is evidence of this. The woman was denied medico-legal examination by two public hospitals in the city and spoke about how she was kept waiting at the hospital. The doctor discussed her case with senior colleagues and told the survivor that rape by her husband was not “rape” and that the hospital could not carry out a medico-legal examination.

Key points

- In the last decade or so, several countries have amended national laws to align with human rights standards. Such amendments are critical in ensuring access to health care and other services for redressal. There are still 36 countries in the world that do not criminalise marital rape, of which India is one.
- Sexual violence in marriage coexists with physical, emotional and economic violence and has a significant impact on the physical and psychological health of women.
- Given the high occurrence and serious impact of marital rape on women's health, and the lack of legal recourse, the health system can play a critical role in documenting the present and past incidents of sexual violence and can help the survivor access care and justice. Whether or not the law recognises an incident of violence as an offence, the role of health professionals is to provide treatment and refer the survivor to support services.
- Removing the exception to marital rape (MRE) will ensure that the police, other law enforcement agencies and health systems are mandated to respond to marital rape and not to trivialise it. This was also recommended by Justice Verma Committee which was set up after the *Nirbhaya* case.