

Women's experiences of marital rape and sexual violence within marriage in India: evidence from service records

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Abstract: *Sexual violence within marriage is common and manifests in various forms, including marital rape. It has serious physical and mental health consequences and is a violation of women's sexual and reproductive health rights. Marital rape, reproductive coercion, inserting objects in the vagina or anus, and withholding sexual pleasure are forms of violence routinely experienced by women. Based on service records of survivors coming to public hospitals in an Indian city, this paper presents their pathways to disclosure and institutional responses such as hospitals and police. The findings highlight that a large proportion of survivors of domestic violence confide having experienced forced sexual intercourse by the husband while sharing their experience of physical, economic, and emotional violence with crisis intervention counsellors. However, a small number of women do report marital rape to formal systems like hospitals and police. These systems respond inadequately to women reporting marital rape, as the rape law exempts rape by husband. Sexual violence within marriage can have serious health consequences, and a sensitive healthcare provider can create an enabling environment for disclosing abuse and providing relevant care and support. The paper argues that a necessary precondition to enable women to access health care and justice is to nullify "Exception 2 to Section 375 of the Indian Penal Code" This exception exempts rape by the husband from the purview of the rape law. DOI: 10.1080/26410397.2022.2048455*

Keywords: intimate partner, sexual violence, marital rape, women's health, reproductive coercion, criminalisation

The outrage after the rape and assault resulting in the murder of a health professional in December 2012 in India* led to several public demands for addressing the issue of violence against women and changes in the criminal justice system. One response by the Indian government was to introduce amendments to the criminal law of rape. Before these amendments, an act was considered rape only if there was an attempt at peno-vaginal penetration. The law did not include as rape other forms of sexual violence, such as inserting objects or any other body part into a woman's vagina,

anus, mouth, or urethra. The Criminal Law Amendment Act, 2013 brought in critical changes providing a standardised framework on rape and sexual violence but, regrettably, the issue of sexual violence by the husband in a marital relationship (marital rape) is left out. These amendments thus failed to address the concern of sexual violence within marriage. The law retains the exemption from the offence of rape of forced sexual intercourse by a husband with his wife. This exemption is based on the notion that there is "implied and irrevocable consent to sexual intercourse by women" in marital relationships.¹ This impunity of marital rape ignores the relationship which has been established between sexual violence within marriage and health consequences for women.

*There has been widespread national and international condemnation of the assault and gang rape of a 23-year-old health professional in Delhi in 2012, which led to her death. This case is also widely known as the *Nirbhaya* case.

Current evidence on sexual violence by an intimate partner

Violence against women (VAW) has been recognised as a public health issue and a violation of women's human rights. The 2030 Agenda for Sustainable Development Goals has emphasised the need to monitor VAW. Yet, there is limited high-quality, actionable data on the prevalence of VAW due to limited capacities to measure prevalence, lack of resources and the ethical and methodological challenges in researching VAW.

Asking women about sexual violence by an intimate partner is challenging across cultures. Global estimates based on Demographic and Health Surveys (DHS) provide some insights into the prevalence of intimate partner violence. The latest available estimate on intimate partner violence from the World Health Organization (WHO) is that “globally about 1 in 3 (30%) of women worldwide have been subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime”. (WHO, 2021) Further, a multi-country study found that in 10 countries sexual VAW of age 15–49 years from an intimate partner varied from 6% to 59%. (WHO, 2005)

In India, the National Family Health Surveys (NFHS)[†] and National Crime Records Bureau (NCRB)[‡] are the only two sources which provide national-level data on VAW. The NCRB data include only those women and/or their families who have mustered up the courage to register a police complaint. Additionally, as the law does not recognise sexual violence by husbands, the reporting of marital rape is almost negligible. A working paper based on a comparison of NFHS and NCRB data indicated that less than 1% of cases of sexual violence by the husband are reported to the police.²

The NFHS uses two categories to measure sexual violence: “use of physical force by the husband to have sexual intercourse even when the wife did not want to” and “forcing a woman to perform sexual acts she did not want to”. A study carried out in urban parts of Southern India reported on several forms of sexual violence by the husband. These included the use of physical force by the

husband for engaging in “sexually degrading or humiliating acts, using weapons for forcing sex, forcing wife to engage in sex in absence of privacy, and criticising or humiliating wife for or during sex”.³ The study did not include actions such as “preventing access to contraception and safe abortion” as forms of violence by the husband, but these have been now recognised as reproductive coercion, a form of domestic violence. A cross-sectional study in Gujarat and West Bengal also found underestimation by research studies of sexual violence in marital relationships. The study concluded that measuring sexual violence with questions focusing only on forced sex would lead to underestimation. Women were less likely to indicate sexual contact as coercive if physical violence was not involved.⁴

The reported prevalence of sexual violence by intimate partners varies widely across studies in India. A survey carried out in 2010 reported that one in five men reported having ever forced their wives for sex.⁵ In another study carried out in rural Karnataka, 36% of the women agreed to the statement that “a husband might force his wife to have sex even if she refuses”.⁶ A mixed-method study in Chennai found that about 31% of women reported sexual violence by husbands.⁷ A large-scale survey on married men in four districts of Uttar Pradesh found that about 32% of husbands in their lifetime had forced their wives to have sexual intercourse.⁸ More recently, the National Family Health Survey (2019–2020) showed that 29% of ever-married women had experienced some form of physical or sexual violence from their husbands.⁹

There is also substantial evidence on the occurrence of sexual violence by the husband during pregnancy.¹⁰ A study conducted by Varma and colleagues¹¹ in an antenatal setting found that, in the previous 12 months, 14%, 9% and 15% of pregnant women faced physical, psychological, and sexual violence, respectively. A recent study found that 40% of women who reported domestic violence during pregnancy faced sexual violence from husbands.¹² More recently, the National Family Health Survey (2019–2020) showed that 29% of ever-married women had experienced some form of physical or sexual violence from husbands.⁹

These estimates on the prevalence of marital rape should be interpreted carefully. In general, there is gross under-reporting of sexual violence in India due to stigma and barriers faced by survivors related to notions of shame and honour.¹³

[†]NFHS is the only national-level source of data on the prevalence of intimate partner violence along with related indicators

[‡]The National Crime Records Bureau (NCRB), under the Ministry of Home Affairs, Government of India, collects and analyses all data on crime as defined by the IPC.

Health consequences of sexual violence in marriage

There is strong evidence in the literature to indicate that marital rape leads to severe physical, sexual, reproductive, and psychological health consequences.^{14–16} As women are abused multiple times by a person they trusted, the consequences of marital rape on women's health are grave.^{17,18}

Health consequences include an increased risk of getting sexually transmitted or reproductive tract infections (STIs/RTIs) and HIV/AIDS due to forced sex and the wife's inability to negotiate the use of condoms by her husband.^{19–21} It is evident from the literature that men who inflict violence on their spouses are more likely to engage in sex outside marital relationships, have sexually transmitted infections, and thus pose an increased risk for their spouses through sexual coercion.^{22–24} Further, sexual violence has also been found to be associated with stillbirths, pelvic inflammatory diseases (PIDs), poor access of women to prenatal care, and attempted suicides by women.²⁵

Women facing domestic violence were found to be 2.59 times more likely to experience perinatal and neonatal mortality in a study conducted in North India among 2199 pregnant women.⁸ A study by Johri et al. recommended that reproductive health services must include screening for spousal violence as they found an association between miscarriage and violence faced by women from an intimate partner.²⁶

This paper attempts to describe 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. The findings raise important concerns regarding the inadequacy of redressal mechanisms and the limited roles played by the police and health system, influenced significantly by the impunity afforded to marital rape by the law. The paper highlights the pivotal role that a sensitive health system can play in identifying sexual violence by recognising the health consequences associated with it.

Methodology

The paper is based on service records of violence survivors. These service records include counselling records of a public hospital-based crisis intervention department and medico-legal forms of

three public hospitals in Mumbai. The authors are part of a non-governmental organisation (NGO) working with public hospitals on strengthening their response to VAW. As part of monitoring the quality of services and adherence to standards of care, the authors are responsible for the review of service records, including medico-legal forms and counselling records, and building the skills of healthcare providers to provide a comprehensive response to women facing violence. A team of counsellors routinely reads the service records and monitors the documentation quality regularly.

For this paper, we have analysed the following records quantitatively and qualitatively:

- i. *Counselling records of survivors who reported domestic violence at a public hospital-based crisis intervention department from April 2008 to March 2017:*

These women did not come to the hospital with a complaint of marital rape. They sought services for domestic violence from the crisis intervention department at the hospital. We analysed the counselling records to understand the 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. Counselling records are maintained by counsellors and include socio-demographic profile, history of violence, health consequences, support sought in the past, and intervention provided by the department.

- ii. *Medico-legal forms of all survivors who reported sexual violence from an intimate partner at all the three hospitals during a nine-year period (April 2008 to March 2017):*

We analysed these forms to present the profile of survivors, the types of sexual violence reported, the pathways through which these survivors reached the hospital, and their experience of seeking justice. Medico-legal forms include the basic profile of the survivor, the reported incident of sexual violence, time since the incident, details of physical examination, evidence collected, and medical opinion of the doctor.

The two data sources represent different pathways to disclosure, as shown in [Table 1](#).

The Anusandhan Trust's Institutional Ethics committee approved the study to analyse these

Women disclosing marital rape to counsellors while seeking support for domestic violence (counselling records)	828 of 1783
Women reporting marital rape to the hospital (Medico-legal forms)	18 of 1664

records (ATIEC06/2016, 15 October 2016). In the process of analysing the data, all ethical guidelines have been adhered to. The original service records were photocopied and the identifiers were removed from xerox copies with white ink. The data were entered into the Statistical Package for Social Sciences (SPSS) for Windows, Version 20.0. Armonk, NY by IBM Corp. The data were entered jointly by the data entry operator and counsellors to avoid abstraction of information. We gave a unique registration number to each case of domestic and sexual violence to maintain confidentiality. The unique registration numbers were used to maintain the Management Information System of these cases. This information system was accessible only to the team members who were involved in this project. The photocopied case records are also kept under lock and key.

Findings

Domestic violence survivors reporting sexual violence to counsellors: analysis of counselling records

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 a 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, 10.4% were separated/widowed or deserted, and 10.2% were never 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 8% being in the age group of 18–35 years.

Pathway to the crisis intervention department in public hospitals

Forty-one percent (339) of the women were referred to the crisis intervention department by the health system as they had come to the hospital for treatment of health complaints as a result of ongoing violence. The health complaints ranged from physical assault reported by 46%, attempted suicide by 28%, reproductive health complaints by 25% and attempted homicide by 1%.

Forms of violence

The history of violence revealed that 91% of women had been experiencing violence since marriage. One in four women (25.6%) who were married for less than a year were pregnant when they reached the crisis intervention department. They reported that they were not using any form of contraception due to the sexual control exerted by their partners.

Table 2 shows different forms of sexual violence reported by women. Sixty-eight per cent of the women reported “forced sex,” referring to forced penile penetration and 8% of women reported that they had experienced “forced anal or oral penetration”. These forced sexual acts would be recognised as “rape” under Section 375

Forms of violence (multiple responses)	Total number of women	
	N = 828	%
Forced sexual intercourse	565	68
Withholding sexual pleasure	260	29
Not allowing women to use any contraceptive	79	10
Forcing her to have children	119	14
Forcing wife to perform sexual acts against her will (e.g. oral sex)	64	8
Sexual advances from other family members	30	4

only if exception 2 to the law were not to exclude marital rape.

The analysis of case records also revealed several forms of sexual violence experienced by women in addition to forced sexual intercourse (Table 2). Twenty-four per cent of women reported reproductive coercion as the husband refused to use any contraceptive and also prohibited her use. Four per cent of women reported facing sexual violence from the husband's relatives.

As seen here, sexual violence within marriage takes various forms that go beyond "forced sexual intercourse"/marital rape. The partner's refusal to use contraception or allow the woman to use any form of contraceptive, and forcing the woman to have children, are recognised as reproductive coercion and a form of sexual violence. Women also complained of being forced into oral and anal sex against their wishes and having sexual acts forced on them against their will, as well as acts that they found repulsive. Twenty-nine per cent 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.

About 92% of women informed about experiencing physical and financial violence concurrently with ongoing sexual violence. Table 3 presents other forms of violence reported by women.

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). Other mental health consequences experienced by survivors included nervousness and tension (72%) and feeling afraid all the time (36%). Forty-eight per cent of the women sought help from police by filing a domestic violence complaint but in all these cases the police had registered a non-cognisable offence, i.e. an entry in a police diary that does not warrant any investigation. At present, there is no option for such women to file a criminal complaint due to "exception 2 in Section 375 of the Indian Penal Code".

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, at least 18 women reported marital rape and sought medico-legal support.

Profile of women

Women reporting marital rape were mostly young. Thirteen were in their 20s, and five were in their 30s. Of the 18 women, 8 were residing with their husbands and 10 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. 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 in 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.

Forms of sexual violence and health consequences

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.

	N = 828	%
Physical	760	92
Emotional	828	100
Financial	759	92

Thus, women came to the hospital to get treatment for vaginal/anal injuries, bruises, and bite marks on the body.

All the women reported experiencing domestic violence including forced sexual intercourse. Only women separated from their partners had registered domestic violence cases against their partners that included physical, emotional, and economic abuse. 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)

“A survivor who had divorced her husband because of domestic violence said that he came to her house, asked for forgiveness, and had forced sex with her.” (From service record of 32-year-old survivor)

It was not the first time the partner had raped them after separation. But the continued threats and fear prompted them to seek help. These threats also included threats to rape a child or relative. Two women had been raped by their husbands several times, but they reported the recent incident as the husband threatened to rape their child or relative.

Women currently married and living with their partners had been experiencing domestic violence for one or two years. The incident reported by them was not the first incident they had experienced, but the consequences of such repeated acts pushed them to seek support. They told the doctor about the violent sex that their partners forced on them. 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)

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 2 of the 10 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 case.[§] The police were not aware of the amendments to rape law that recognised sexual violence by the husband who was separated or divorced as rape.^{**} 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)^{††} as the perpetrator of rape was the husband. The police told four women that they could not do anything in cases of rape by the husband, as marital rape was not a crime. In the case of the 21-year-old woman who reported that her husband had injected HIV-positive blood, a social worker accompanied the woman to the police and the police filed a case under Section 498A.^{‡‡} The inadequate police response is of concern as all the women had suffered severe violence. The least

[§]These are sections under criminal law.

^{**}The current law criminalises any form of sexual intercourse by the husband upon his wife during a period of separation, as provided under section 376B of the Indian Penal Code, 1860.

^{††}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).

^{‡‡}Section 498A makes it criminal for a husband and his relatives to subject a married woman to cruelty. The law has defined ‘cruelty’ “to include inflicting physical or mental harm to the body or health of the woman and indulging in acts of harassment to coerce her or her relatives to meet any unlawful demand for any property or valuable security” (India Code: Digital Repository of all Central and State Acts).

that the police should have done was record a cognisable offence or FIR and ensure 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 had 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 had also carried out a medico-legal examination and provided treatment without speculation over whether or not this was a case of “rape” as per the law. They noted the current and past incidents of violence, conducted a medical examination, collected evidence where necessary, and provided the woman with treatment and counselling. 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 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 the NGO to which the authors belong.

However, this is not the case 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. When she insisted, they asked her to register a police complaint and come back with the police. Finally, she was referred to the hospital where a crisis intervention department is located and her complaint was recorded but by then she had lost two days. This narrative depicts the routine response of most hospitals, where there is a failure to recognise marital rape as “rape” that requires medico-legal care, and underscores the

need to have clear protocols and training of healthcare providers to adhere to them.

Discussion

The findings from service records of survivors suggest that marital rape and other forms of sexual violence within marriage are common. Sexual violence within marriage is not limited to rape/forced sexual intercourse but also includes reproductive coercion, which causes health consequences that bring survivors in contact with a health provider. Large numbers of survivors of marital sexual violence seek health care from hospitals and counselling services from the crisis intervention department. However, very few survivors reach the hospital to report marital rape for medico-legal purposes.

Fifty-eight per cent of domestic violence survivors reported facing sexual violence from their husbands. Despite this high proportion, it is likely that many women may not have disclosed marital rape to the counsellor due to shame and the perception of sexual violence as being part and parcel of intimate relationships. It is recognised that patriarchy allows men to exert sexual and reproductive control over women.²⁷ It is, therefore, quite likely that the proportion of women experiencing marital rape is much higher.

Marital rape may be under-reported for many reasons other than stigma around reporting intimate experiences. These include the absence of a physical injury, normalisation of husbands forcing sex on their wives, perceptions about the difference in sexual desire of men and women, or of non-consensual sex being inevitable in marriage,²⁸ and the socio-cultural norms and legal statutes that condone such violence.²⁹

It should be noted that, rather than existing in isolation, sexual violence in marriage coexisted with physical, emotional, and economic violence. The survivors who sought services for domestic violence from the crisis intervention department spoke about marital rape and other forms of violence only as part of history-taking by the counsellors when they were encouraged to describe their experiences in detail. Findings highlight the significant impact of marital sexual violence on the physical and psychological health of women.

The findings of this study support the evidence in the literature that married women commonly experience forced sex.^{30,31} Marital rape appears to be a daily phenomenon in the lives of a large

number of women, and yet only a few women sought any formal support for marital sexual violence.

The paper presents the case of 18 women who reported marital rape and wanted their complaints to be recorded and their husbands arrested. They did not remain silent because of shame but reported it to the police and the health system. However, the response of the police was found to be very problematic in these cases. As per the amended law, in the cases of women who were separated from their husbands, the police should have promptly registered an offence of rape (against the husband) but no such case was registered, perhaps because of the police's attitude and the lack of standard protocols. The perception about marital rape amongst the police is that it is "part and parcel" of marriage. They are also influenced by societal norms that justify all forms of domestic violence, including forced sexual intercourse by the husband. Such perceptions prevent them from recognising that even within a marital relationship the consent of women is essential for sexual relationships. There are media reports that the common response of the police towards women reporting marital rape included "go back home and adjust" and "this is an internal matter".^{32,33}

The findings from 18 cases make a strong case for marital rape to be recognised as an offence and not to be condoned just because an intimate partner perpetrates it. Not recognising marital rape is unconstitutional and violates a woman's fundamental right to healthy life and dignity. The fact that these 18 women reported marital rape indicated that they had enough of it and wanted justice.

Contrary to the response of the police, the trained health workers in the hospitals from which medico-legal forms are analysed did not compromise on their therapeutic duty. They responded by documenting the women's history and conducting relevant medico-legal examinations and evidence collection. They ensured survivors' access to care and provided an empathetic environment for them to seek redressal. A supportive response by healthcare providers was made possible through ongoing sensitisation and training, implementing Standard Operating Protocols (SoPs), monitoring, and supervision. Given the high occurrence and serious impact of marital rape on women's health, and the lack of legal recourse, the role of health systems is critical in

the provision of supportive care and documentation. Women may not seek any legal or police support but do access treatment for the health consequences of violence. The health consequences of sexual violence must be recognised so that they can be identified and appropriate support provided to women. Several research studies have recommended that social workers, counsellors, doctors, and nurses routinely assess for sexual violence.^{34–36} A longitudinal study that included clinical examination of women recommended that healthcare providers ask women with a complaint of STIs about partner sexual violence.²⁴

The experience of the public hospital-based crisis intervention department in this study demonstrates that hospitals geared to respond to VAW could identify abuse based on symptoms, such as vaginal infections, repeated abortions, reluctance to use contraception, multiple pregnancies, boils/swelling on genitals, amongst others. The SoP ensured a sensitive response to women reporting marital rape without speculation over whether it is criminalised or not. In contrast, a study in Bangalore had reported that healthcare providers recognise their critical role in responding to marital sexual violence in India, but their response was constrained due to barriers such as the absence of hospital protocols requiring them to assess signs and symptoms associated with VAW, and high caseload.³⁷ The health system can be made more responsive, as evidenced by the crisis intervention department, by allocating resources for training and sensitisation and implementing rights-based SoPs. Such an approach has been found useful and replicated in other settings.³⁸ The ongoing work on strengthening health systems' response to violence survivors has significant learnings for building an effective and sensitive response of police towards survivors of marital sexual violence.

The findings of this paper highlight that Exception 2 to Section 375 of the IPC, 1860, that "sexual intercourse or sexual acts by a man with his wife, the wife not being under eighteen years of age is not rape", is problematic. The exception contradicts the Constitution of India and various international covenants and the Protection of Women from Domestic Violence Act (PWDVA) 2005³⁹ itself. Section 3(a) of the PWDVA defines sexual abuse as "any conduct of sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of a woman", and squarely places spousal sexual

violence as a type of domestic violence. Despite the clear legal recognition of sexual violence within marriage by PWDVA, the exception to Section 375 condones rape within marriage. But the PWDVA is civil law. The civil remedy available in such cases is a Protection Order to stop violence and offer compensation and other reliefs to the aggrieved wife. The only criminal law that a woman can use is Section 498A IPC which recognises cruelty within marriage. Cruelty is defined as any conduct that may cause serious injury or harm or drive a woman to commit suicide as a consequence of ongoing abuse. Such a definition raises the bar of evidence very high as women often have no evidence of acts of violence perpetrated against them.⁴⁰ The Supreme Court has rejected cases of marital rape where women reported sexual violence by the husband that included insertion of torches into the vagina, leading to hospitalisation following severe haemorrhage.⁴¹

One of the recommendations of the Justice Verma Committee that was set up after the *Nirbhaya* case described above was that marital rape be penalised. (Verma Committee Report, 2013). In 2014, the Special Rapporteur on Violence Against Women also recommended “the amendment of Criminal Law (Amendment), Act 2013 [to] include a definition of marital rape as a criminal offence”.⁴² In 2015, the Pam Rajput Committee appointed by the Government of India to study the status of women in India strongly recommended that marital rape be criminalised and argued that marriage does not presume consent.⁴³

International criminal law has a broad definition of rape that includes various invasive acts perpetrated by and against people of any sex or gender. It also recognises rape within marriage as a crime. In the last decade or so, several countries have amended national laws to align with these 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.

Recognising marital rape as an offence and criminalising it will ensure that the police and other law enforcement agencies are mandated to respond to marital rape and not to trivialise it. As women have inevitable contact with the health system, doctors, nurses, and hospital-

based crisis centres can play a critical role in supporting women.⁴⁴ Thus, the penalisation of marital rape and sensitisation of the health system and police can help build a sensitive response of police towards survivors of sexual violence.

Conclusion

The resistance to including marital rape as an offence in the existing definition of rape is rooted in patriarchal values and gender norms that define the “duties” of a wife. The marital exemption to rape is based on implied consent. The data presented here make a strong case for recognising marital rape as a crime. Removing marital exemption to rape requires policy and institutional support and allocation of resources for necessary infrastructure, human resources, and staff capacity building. 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. The police also must follow due process, listen to what the woman says, record her complaint and help her seek supportive services.

Limitations of the study

The primary limitation to generalising the findings of this study is that the analysis is based on service records of women who could reach the public hospital, not on population data. Moreover, since the data is based on self-reporting by women, rape and sexual violence within marriage may be more common than reported in this study.

Acknowledgements

We would like to extend our sincere gratitude to members of CEHAT's Programme Development Committee and Anusandhan Trust Institutional Ethics Committee for reviewing the project at different stages. We would like to thank Chitra Joshi, Mrudula Sawant, Sujata Ayarkar, Aarthi Chandrasekhar and Rajeeta Chavan for providing counselling services to the survivors of violence.

Disclosure statement

No potential conflict of interest was reported by the author(s).

Funding

This project was funded through the American Jewish World Service (AJWS)

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Résumé

Les violences sexuelles dans le mariage sont communes et se manifestent sous différentes formes, notamment par le viol conjugal. Elles ont de graves conséquences sur la santé physique et mentale et constituent une violation du droit des femmes à la santé sexuelle et reproductive. Le viol conjugal, l'obligation de procréer, l'insertion d'objets dans les parties intimes et le refus du plaisir sexuel sont des formes de violences

Resumen

La violencia sexual dentro del matrimonio es común y se manifiesta en diversas formas, entre ellas la violación marital. Tiene graves consecuencias para la salud física y mental, y es una violación de los derechos sexuales y reproductivos de las mujeres. La violación marital, coacción reproductiva, inserción de objetos en las partes privadas y la denegación de placer sexual son formas de violencia que sufren las mujeres de manera

fréquemment subies par les femmes. Sur la base des dossiers des victimes s'étant rendues dans des hôpitaux publics d'une ville indienne, cet article présente leur cheminement vers la révélation et les réponses institutionnelles données par l'hôpital et la police. Les conclusions mettent en lumière le fait qu'une forte proportion des victimes de violences familiales confient qu'elles ont été obligées par leur mari de subir des rapports sexuels tout en ayant partagé leur expérience des violences physiques, économiques et psychologiques avec des conseillers spécialisés dans les interventions en situation de crise. Néanmoins, un petit nombre de femmes signalent le viol conjugal aux systèmes officiels comme les hôpitaux et la police. Ces systèmes répondent de manière inadéquate aux femmes qui font état d'un viol conjugal, puisque la loi sur le viol fait une exception pour le viol perpétré par le conjoint. Les conséquences des violences sexuelles pendant le mariage sont graves et un prestataire de santé sensible peut créer un environnement propice à la révélation de mauvais traitements et prodiguer un soutien et des soins pertinents. L'article avance qu'une condition préalable nécessaire pour permettre aux femmes d'avoir accès aux soins de santé et à la justice est d'annuler « l'exception 2 à la section 375 du Code pénal indien ». Cette exception concerne le viol par le mari qui est

rutinaria. Basado en registros de servicios proporcionados a sobrevivientes que acuden a hospitales públicos en una ciudad de India, este artículo presenta las rutas de esas mujeres a la denuncia y las respuestas institucionales tales como las de hospitales y la policía. Los hallazgos destacan que un gran porcentaje de sobrevivientes de violencia doméstica confesaron haber sufrido coito sexual forzado por su esposo, cuando relataron su experiencia de violencia física, económica y emocional a consejeros de intervenciones en respuesta a crisis. Sin embargo, un pequeño porcentaje de mujeres denuncia la violación marital a sistemas formales, tales como hospitales y la policía. Estos sistemas responden inadecuadamente a las mujeres que denuncian la violación marital, dado que la ley sobre violación exime la violación perpetrada por el esposo. La violencia sexual dentro del matrimonio tiene graves consecuencias para la salud; un prestador de servicios de salud sensible puede crear un entorno propicio para denunciar maltrato y brindar atención y apoyo pertinentes. Este artículo argumenta que una precondition necesaria para ayudar a las mujeres a acceder a servicios de salud y justicia es anular la "Excepción 2 a la Sección 375 del Código Penal de India". Esta excepción exime la violación por el esposo del alcance de la ley sobre violación.