

Marital Rape as Structural Violence in the Legal System

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Abstract: Intimate Partner Violence (IPV) stands as a significant concern for mental health professionals and advocates for women's rights. In this realm, marital rape is identified as the unwelcome sexual acts a husband imposes on his wife, frequently accompanied by physical violence and threats, instilling fear and injury in women. Despite the profound trauma it causes, marital rape is not universally illegal or considered a severe crime in some areas. The lack of attention to marital rape by society and the legal frameworks, especially in the context of increasing awareness of women's health, warrants a closer look. This study seeks to explore the influence of societal views on marital rape on the seeming leniency of the legal system and proposes possible remedies. It is clear that in societies with deep-rooted patriarchal values, where a husband's authority is prioritized, marital rape is normalized as a form of structural violence, thereby undermining the legal system's response. Addressing this issue requires strict legal reforms, including joining international frameworks and comprehensive public education to raise awareness.

Keywords: Intimate Partner Violence, Marital Rape, Structural Violence, Social Norm

1. Introduction

Intimate Partner Violence (IPV), which usually refers to physical, sexual, or psychological abuse of a person by their partner, remains a critical public health issue for mental health professionals and women's rights advocates, as well as social workers. Within the context of this research paper, various forms of marital rape happen when a husband constructs non-consensual sexual acts upon a wife, often accompanied by physical assault and threats, leading to fear and traumatic experiences for women [1], causing various negative consequences to the victims physically and psychologically, including but not limited to unintended pregnancies, abortions, depression and Post-Traumatic Stress Disorder (PTSD). Despite the severe harm inflicted on women, marital rape is either legally permitted or not regarded as a grave offense in most regions around the world [2]. This situation necessitates an examination of why society and legal systems often overlook this aggressive behavior, given the rising concern for women's physical and psychological health from the general public.

The objective of this study is to examine the impact of societal views on the power imbalance between men and women in sexual relations, particularly within intimate partnerships and marriages, on public attitudes toward marital rape, to explore its effect on the judiciary's apparent mild response, and to propose possible remedies. It is evident that in traditionally patriarchal societies, where a husband's rights and interests are given precedence in marriage, marital rape is perpetuated as normalized structural violence against women and weakens the legal system's ability to address such

acts effectively [3]. This form of structural violence has also prevented women from accessing health services and protections. To tackle this problem, the government should implement firm legal measures on aggressive sexual behaviors within marriage and educate the public on the negative consequences of marital rape.

2. Marital Rape and Potential Consequences

Marital rape embodies a deeply troubling form of domestic violence where a husband forcibly engages in sexual relations with his wife without her consent, frequently accompanied by other violent acts like physical assault. This not only results in immediate physical harm but also contributes to enduring psychological distress for the victim. Martin delineates three distinct patterns of this aggression [4]:

1. **Battering Rape:** This most common type of marital rape is characterized by both verbal and physical abuse. The perpetrator may use sexual assault as part of a broader pattern of domestic violence, exerting control and dominance over their partner.
2. **Force-Only Rape:** This category involves coercive sex that stems from ongoing disputes over sexual relations. It is marked by fewer instances of physical violence but is no less traumatic for the victim, who is coerced into sex against her will.
3. **Obsessive Rape:** This type is characterized by the husband's fixation on non-conventional sexual acts, which may include bondage or the reenactment of scenes from pornography. The perpetrator's sexual satisfaction is derived from the victim's discomfort or pain.

Women who suffer from marital rape face a spectrum of physical injuries, such as soft tissue damage, lacerations, and bruising, which are indicative of the violence they have endured. Their gynecological health is also jeopardized, with many reporting severe abdominal pain, pelvic discomfort, and other symptoms like abnormal bleeding or discharge, painful intercourse, and an array of reproductive issues [3]. These health problems are not just immediate concerns but can have lasting effects on a woman's reproductive and overall health. The psychological impact of such trauma is also profound. Victims may experience a range of mental health issues, including, but not limited to, depression, anxiety, and PTSD. These conditions are further exacerbated by the potential social isolation that can occur when the victim's plight is minimized or ignored by their community or legal systems. Women subjected to such intimate partner violence are at a much greater risk of contemplating or attempting suicide [3], indicating the severe emotional and mental toll of these experiences. The increasing societal alarm over these violent acts calls for more than just legal intervention; it necessitates a fundamental change in societal attitudes towards power dynamics and control within intimate partnerships.

3. Marital Rape as Structural Violence

Throughout history, various acts of violent actions against women, including marital rape, have often been downplayed or even legally sanctioned in large parts of the world [3]. It is vital for general public and governments to understand that non-consensual sex in marriage is a criminal act, just as sexual assault by others is. This issue transcends mere individual conflicts; when a significant proportion of men globally coerce their wives into sexual acts, it reflects a pervasive form of structural violence in society [3]. Targeting only relatively few men who commit sexually violent behaviors towards their wives could distract us from examining and learning from those structural causes of violent behaviors that are far more significant from a public health or human standpoint [3]. This

research article defines structural violence as harm inflicted by societal structures that hinder individuals from meeting their basic needs, violating fundamental human rights [5]. Marital rape, in particular, is a profound infringement of women's rights, stemming from archaic beliefs that equate marriage with a transfer of property rights over the woman to her husband, thus excusing violence against women.

Cross-cultural norms often imply that marriage entails a woman's unconditional sexual consent to her husband, disregarding her autonomy [6], making the issue of marital rape hide in private spheres. Prevailing attitudes in human society suggest that women in intimate relationships or marriages do not overtly express sexual desires, leaving men to dominate sexual decision-making. It is also widely believed that it is a wife's duty to satisfy her husband's sexual desire, regardless of circumstances. These social norms lead to a widespread disregard for women's consent in sexual activities. Research by Muche's team indicates that such beliefs have so profoundly permeated societal thinking that a large percent of their participants, including women, deny the possibility of rape within marriages and believe that rape is exclusive to unmarried women [7], demonstrating that social standards have a significant impact on people's perceptions of male and female's role in sexual activities, especially for intimate partners and married couples.

Women are disproportionately subjected to a range of violent acts by family members throughout their lives, including both physical and psychological harm. The disturbing prevalence of such violence is compounded by systemic disparities that restrict women's access to essential services like healthcare, education, and avenues for political advocacy, particularly when they are confronting violence perpetrated by men and trying to exercise their basic human rights [4]. The health repercussions of marital rape are profound and varied, encompassing conditions such as fistulas, various disabilities, HIV/AIDS, unintended pregnancies, and the tragic outcomes of abortions and stillbirths. In addition to physical ailments, the continuous onslaught of sexual violence and other gender-based abuses substantially heightens the likelihood of psychological distress, manifesting as depression, post-traumatic stress disorder (PTSD), self-blame, diminished self-esteem, body image issues [7], and altered perceptions of men and sexual relationships.

Despite the recognition of these issues as a grave public health matter, prevailing patriarchal structures often pose formidable barriers to women seeking the necessary medical attention and support services. Their reluctance to seek help can be attributed to numerous factors, including the fear of reprisal, a sense of powerlessness, shame, self-blame, and the pervasive minimization of marital rape's severity [4]. These factors not only shape the victims' decisions to seek assistance but also influence the sources from which they might seek such help. When women do reach out for legal support, they frequently encounter judgment or blame for the violence inflicted upon them, even when there is evident victimhood. Such obstacles are deeply entrenched in gender biases and societal conventions that unduly favor male prerogatives and necessities over those of women.

Consequently, women often face great difficulty in obtaining the necessary healthcare and legal aid, which significantly affects their overall well-being and continues to drive the cycle of gender inequity in access to health and legal justice [7]. This underscores the critical need for a societal transformation that not only changes laws but also challenges and restructures the social and cultural norms that enable such disparities and injustices.

4. Marital Rape and the Legal System

While most forms of gender-based structural violence are increasingly acknowledged internationally, marital rape remains the one that has evaded both criminal and human rights sanctions, violating women's fundamental rights. Currently, over half of the countries globally do not explicitly outlaw marital sexual assault, and for countries that criminalize this action, the implication of the legal restriction is still concerning [5]. Even in jurisdictions where sexual assault is a criminal offense,

exemptions often exist for acts committed by intimate partners or husbands. This lack of recognition is, in part, perpetuated by patriarchal legal frameworks that have existed for a long time and value male interests and honors [8]. The most profound evidence is from the unity theory, articulated by 18th-century British scholar William Blackstone, who posited that rape within marriage was not a crime since a husband could not violate his property [9]. Historically, men's dominance in political and public spheres, coupled with women's confinement to domestic roles, has influenced the legal system's approach to violence against women, particularly marital rape.

It was not until the Women's Movement of the 1970s that marital rape began to be recognized as a severe issue, prompting calls for legal reform [9]. The legal system continues to shape societal perceptions of rape, often minimizing the severity of sexual violence within marriage. Until today, in cultures with strong gender-specific honor norms, there still is a high tolerance for violence against women, particularly within intimate relationships, marriages, and other cases perceived as threats to male honor [3]. Such a culture of male honor fosters lenient attitudes towards men's sexual aggression against women, reinforcing the patriarchal belief that marital rape is non-existent, as wives are often viewed as their husbands' property. This results in many victims not identifying their experiences as marital rape due to prevailing masculine ideologies. Consequently, this misunderstanding leads to a lack of awareness and underreporting of marital rape [6]. Additionally, marital rape often occurs alongside broader patterns of domestic violence, leading to the normalization of such behavior [10]. Victims frequently do not report marital rape due to shame or fear of social repercussions, such as being accused of failing in their "wifely duties" [9]. Due to insufficient professional training among legal system personnel, legal proceedings frequently concentrate on scrutinizing the victim's conduct, leading to heightened victim blaming, especially when the behavior strays from conventional expectations of women. The persistence of legal loopholes allowing men to violate their partners with impunity sexually highlights the urgent need for further human rights law reforms in this area [11]. To effectively reduce the prevalence of marital rape, comprehensive legal reforms are required. This involves strengthening laws and altering societal beliefs that currently normalize or accept such violence. Raising awareness, educating communities, and promoting gender equality are crucial steps in changing the narrative around marital rape, ensuring that it is recognized as the serious violation of human rights that it is.

5. Suggested Solutions

Given the historical underestimation of marital rape in legal discourse, it is imperative to initiate scholarly and societal dialogues aimed at its criminalization as an integral aspect of combating violence against women. It is also essential to foster a social setting where community groups are actively involved in safeguarding women's basic human rights. For countries that have not yet legislated against sexual assault within marriage, it is critical for governments to recognize the urgency of the issue and to align with international frameworks such as The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [1]. This convention, a primary tool in addressing discrimination against women, has been expanded by the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to include gender-based violence that inflicts physical, psychological, and sexual harm on women [1]. Ratification of this convention allows the CEDAW Committee to oversee and ensure that member states enact legislative measures promoting equality between men and women in marital and family life. CEDAW also mandates the alteration of discriminatory cultural practices, placing women's rights ahead of the preservation of community traditions [1]. Under CEDAW, there is the enforcement for governments to equip police officers, social workers, and other community members with enhanced skills to address marital rape cases effectively and offer substantial support to victims.

However, it is crucial to acknowledge the inherent limitations of criminal law in comprehending the complex dynamics of domestic violence. As such, the criminalization of marital rape should be recognized not merely as a private issue or one confined to specific cultures, religions, or customs but as a widespread societal challenge that necessitates a cultural response [11]. In many societies, women predominantly rely on communal mechanisms like religious and social norms over the state's legal system. Therefore, implementing criminalization through these community channels could be more effective [12]. In such scenarios, local customary laws and traditional judicial systems might offer more tailored and effective protection for victims of domestic violence.

Extending this approach further involves the integration of comprehensive education and awareness campaigns to shift societal perceptions of marital rape. These campaigns should aim to dismantle the stigma surrounding the reporting of marital rape and promote a deeper understanding of consent and marital rights [1]. Educational initiatives targeting both the general public and specific professional groups are crucial. These could include programs for legal professionals, healthcare providers, and law enforcement personnel, focusing on sensitization to the nuances of marital rape and the provision of trauma-informed care to survivors. Additionally, the formation of strong support networks for survivors is vital. These networks could provide a range of services, from legal assistance and psychological counseling to medical care and shelter. Such support structures not only aid in the immediate aftermath of violence but also contribute to survivors' long-term healing and empowerment [13]. International collaboration plays a significant role in this endeavor. Sharing insights and strategies across borders can lead to the development of more effective policies and practices. It also helps in creating a unified global front against marital rape, reinforcing the notion that it is a violation of human rights, not just a domestic or cultural issue.

6. Limitations and Future Research Directions

This article scrutinizes the impact of marital rape, viewed as a manifestation of structural violence, on the inclination of the legal system to tolerate such acts. It is important to note, however, that the analysis presented is limited to the context of heterosexual unions, which indicates a gap in the research regarding the experiences of individuals in LGBTQ+ marriages. This is a critical but different conversation that needs attention to address the unique challenges and forms of violence that may occur in these relationships [3]. Additionally, while the legislative dimensions of marital rape are currently at the forefront of discussion, the journey does not end with the passage of laws. The real test lies in the application and execution of these laws in diverse settings, each with its own set of intricate issues [14]. There are disparities in how laws are implemented and the extent to which they are enforced, often reflecting the variances in cultural, social, and economic environments.

The necessity for further scholarly inquiry is evident. Future studies must investigate the effective operationalization of laws designed to protect women's rights. Such research must extend beyond the abstract notion of legal protection to address the tangible application of these laws, ensuring that they provide concrete support and defense for those affected by marital rape. Moreover, research on marital rape should also dissect the cultural, social, and economic elements that can either facilitate or hinder the effective enforcement of these laws [14]. These factors can include prevailing gender norms, the accessibility and quality of legal and social support systems, economic independence, and the societal stigma attached to victims of marital rape. The goal is to forge an integrated approach that not only establishes but also consistently enforces a woman's right to autonomy and security within the marriage, free from the threat of violence and coercion [15]. By expanding the discourse to encompass these broader considerations, the aim is to lay the groundwork for a legal and social framework that not only criminalizes marital rape but also actively supports victims and holds perpetrators accountable, thereby affirming the commitment to gender equality and human rights.

7. Conclusion

Marital rape, as a manifestation of violence deeply embedded in patriarchal social norms, has long been ignored by both societies and their legal systems globally. In numerous cultures, the essential principle of a woman's consent in sexual relations, especially within the bounds of marriage and intimate relationships, is frequently and severely disregarded. This oversight not only perpetuates the cycle of violence but also leads to considerable physical and psychological trauma among women, thereby emerging as a significant public health crisis. The impact of this neglect extends beyond the immediate victims. It contributes to a broader culture of silence and stigma surrounding sexual violence within marriage, making it difficult for survivors to seek help and justice. This environment of non-recognition and denial exacerbates the trauma, leading to long-term mental health issues.

To effectively address marital rape, a comprehensive strategy is essential. This strategy should encompass legal reforms to recognize and penalize marital rape adequately. Alongside legal action, active community engagement is crucial to challenge and change deep-seated cultural norms and attitudes. Educational initiatives are equally important, raising awareness about consent and women's rights within intimate relationships.

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