



Marital Rape

Kersti Yllo, Ph.D.

1996

The Battered Women's Justice Project
1801 Nicollet Ave S. Suite 102 Minneapolis, MN 55403
technicalassistance@bwjp.org
800-903-0111, prompt 1

MARITAL RAPE

During the past two decades, the physical and sexual abuse of women and children has become widely recognized. Laws have been changed, shelters and treatment programs have been established, and TV movies have been made. It is hard to miss the media coverage of sensational cases like O. J. Simpson and the McMartin School. But in the midst of all this attention and noise, there is a curious silence surrounding sexual violence toward wives. Marital rape is still widely regarded as a contradiction in terms. There has been little discussion of the topic, less research, and very limited efforts among practitioners to address the problem.

It is significant that a phenomenon such as satanic sexual abuse of children, an extremely infrequent phenomenon, receives more public attention than the millions of marital rapes. It is significant, but not surprising. It is much easier to recognize brutality among devil-worshippers, who are widely regarded as dangerous deviants, than among husbands, whose assaults occur within society's most cherished relationship - marriage. Marital rape is mundane, daily, even normative, in our culture. There is no other form of abuse in which a horrendous violation exists so close to a joyous experience in peoples' lives and psyches.

Somehow we have managed to look directly at the ugly realities of physical battering, incest, and date rape, yet we (practitioners and advocates, as well as the public) turn our gaze away from marital rape. Even advocates who have heard the details of hundreds of brutal beatings admit that they have a hard time dealing with sexual violence. In order to fully and adequately respond to the men who rape and the women who are sexually assaulted, we must focus our attention on forced sex in marriage, not as an additional form of physical battering, but as a significant violation in and of itself, whether accompanied by other violence or not. In order to do that, we need to know more about marital rape and acknowledge our own discomfort with facing the problem. Only then can we consider the ways in which our own fields (whether criminal justice, medicine, social work, psychotherapy, or feminist activism) have ignored and thereby condoned wife rape. And only then can we begin to create change in the systems within which we work.

DEFINING MARITAL RAPE

Legal Issues

Traditionally, rape has been defined legally as forced intercourse without the consent of the woman *other than one's wife*. This last phrase is known as the "spousal exemption" and for centuries it made the marriage license a license to rape. This exemption derives from British common law, particularly from the writings of an early British jurist by the name of Lord Matthew Hale. He proclaimed in 1680 that, "The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given up herself in this kind unto her husband, which she cannot retract." In other words, the marital vow "I do" was taken to legally imply consent any time, any place, and under any circumstances. The Hale doctrine became part of the U.S. criminal code, and marital rape was legal until the 1980s when most states eliminated, or at least limited, the spousal exemption. When North Carolina became the final state to criminalize marital rape, feminist activists claimed an important victory. Through concerted testimony and lobbying, activists across the country managed to fundamentally redefine rape and, in that process, they redefined marriage.

The victory is not as sweet as it might be, however. Although marital rape has been criminalized, it is still regarded as distinct - and suspect - in many states. As of January, 1995, fully thirty states still imposed special restrictions or conditions with regard to rape by husbands. In some jurisdictions, a woman must have a court order active against him at the time of the assault in order to file rape charges. Such restrictions rest on the continuing assumption that sex, whether forced or not, is a husband's rights and a wife's duty. These restrictions continue to allow cohabiting husbands in many states to rape with impunity.

Also, many states have enacted statutes of limitation for marital rape which are far more restrictive than for rape in general. The restricted time frames for reporting marital rape rest on the premise that wives will fabricate rape charges in order to advantage themselves in divorce proceedings if not legally prevented from doing so. The old idea that a rape charge is easy to make and hard to defend against certainly influenced the state legislators who limited the criminalization of rape in marriage. This notion has hampered efforts to prosecute all forms of rape, but it has been particularly insidious in the case of marital rape. The concerns of legislators (as well as police, prosecutors, and the public) about "vengeful wives" are quite palpable in

dealings with marital rape. The fears that the courts would be flooded with groundless cases in the wake of criminalization have proven to be unfounded. Marital rapes continue to be the most underreported of sexual assaults. In those cases where charges have been brought, the conviction rate has been high. This high rate is attributable to the fact that marital rape cases which go to trial are usually brought in conjunction with other charges such as assault and battery, kidnapping, and attempted murder. The evidence for use of force in these cases tends to be overwhelming.

Social and Political Issues

The definition of marital rape can be stated simply as forced sex without the consent of the woman in cases where perpetrator and victim are legally married. This definition appears clear and succinct, yet there are ambiguities embedded within it. First, the phenomenon of “marital” rape is not limited to legally married couples. Cohabiting couples have relationships quite comparable to husbands and wives, and there is evidence that cohabiting women experience even higher rates of violence than wives (Yllo and Straus, 1983). Recognizing the similarity between cohabitators and marrieds, many states have unfortunately extended aspects of the spousal exemption to men who are not even legally married to their partners. Since the dynamics of forced sex are quite similar for cohabitators and marrieds (Finkelhor and Yllo, 1985) and the criminal justice system often fails to draw a distinction between the two, it makes sense to include cohabitators in our definition of marital rape and in our interventions.

The issues of force and consent must be addressed in all rape cases. However, the nature of the spousal relationship makes these issues all the more complex. Many women feel impelled by their husbands to have sex. As one respondent to Shere Hite’s 1976 sex survey reported,

“In my relationship I am forced to give sex because of the marriage vows. My husband has on occasion threatened to withhold money or favors - that is, permission of some sort or another - if I do not have sex with him. So I fake it. What the hell. When the kids are older I just might lay my cards on the table.”

It can be argued that doing one’s “wifely duty” in the context of an unequal power relationship should be regarded as rape. Oppressive as such coercion may be, calling it rape means substantially expanding and, at the same time diluting, the meaning of the word “rape.”

Finkelhor and Yllo (1985) found it useful to distinguish between different forms of coercion. *Social coercion* is the pressure women feel as a result of cultural expectations or social conventions. As one woman in their study put it,

“I know I was feeling coerced and not doing it willingly most of the time. But in a way I’m not sure it was done by him. It was really my own upbringing and the things that I’d been taught . . . My allowing it is what makes it not rape.”

This kind of social coercion regarding marital sex is institutionalized in our culture and internalized in individuals. While such coercion can be degrading and detrimental, especially when accompanied by other forms of male entitlement and control, it does not fall within a useful definition of rape.

Interpersonal coercion occurs when a woman has sex with her husband in the face of threats that are *not* violent in nature. Husbands who threaten to withhold money or have an affair or who become nasty toward the children are guilty of interpersonal coercion. The coercive nature of such threats is especially salient in a marriage where a woman’s dependency and powerlessness undercut her bargaining position. Nevertheless, when such threats are not associated with any physical coercion, the sex that follows cannot be regarded as rape.

Threatened or actual physical coercion, in contrast, are at the core of rape. Physical threats can range from explicit threats to kill a woman if she doesn’t comply, to the implied threat that she will get hurt if she doesn’t cooperate. The implied threats are especially potent in relationships where a husband has battered his partner in the past. The actual use of physical force has a wide range from holding a woman down with greater size and strength to inflicting extensive injuries.

There is no question that social and interpersonal forms of coercion can be oppressive and harmful. These types of coercion can be labeled rape for the political purpose of drawing attention to the violation inherent within them. Nevertheless, for the purpose of intervening on behalf of marital victims in a wide range of institutional settings, it is most useful to limit the definition of marital rape to the use or threatened use of physical force without the consent of the woman.

It is also important for practitioners, activists, and researchers to note that many women whose husbands have physically forced them to have sex despite their active resistance and who

feel deeply violated by the assaults do not define their experiences as rape. The stereotype that rapes are perpetrated by strangers in dark alleys, combined with notions of “wifely duty,” make it very difficult to identify marital rape as “real rape.” The continuing silence around the issue of marital rape in the media, and the criminal justice, medical, and social service systems, contributes to many victims’ sense that their violation is unique. Significant changes in these institutions will have to be made before women name their own experience.

PREVALENCE OF MARITAL RAPE

Given the explosion of research on many forms of family violence, it is surprising how limited the research on marital rape has been. The majority of articles published on the topic focus on legal questions rather than the nature and prevalence of the problem. The two U.S. surveys which provide estimates of the rate of marital rape are more than a decade old. Nevertheless, there is little reason to believe that there has been a decline in forced sex in marriage, so they remain our best estimates. Diana Russell’s representative survey of 930 women in the San Francisco area revealed that 14% of the ever-married women had experienced a rape or attempted rape by their husbands or ex-husbands (1982:57-59). Russell argues that this figure is probably an underestimate for a number of reasons including: 1) it is likely that some respondents were unwilling to admit to experiences of forced marital sex; 2) the prevalence of forced oral, anal, and digital sex, as well as penetration by objects was seriously underestimated because data regarding these acts were not directly solicited; and 3) the sample excluded women with no fixed abode or who resided in institutions such as prisons, hospitals, shelters, or half-way houses. It is likely that women who have experienced the trauma of marital rape are overrepresented among such residents. Russell concludes that her calculation that one in seven women are sexually assaulted by their husbands is a conservative estimate.

David Finkelhor and Kersti Yllo surveyed a representative sample of 323 Boston-area women with children and discovered that 10% of the married or previously married women indicated that their husbands had “used physical force or threats to try to have sex with them” (1985:6). Further, the study found that fully 25% of the separated or divorced women in the sample had experienced such assaults. These estimates are likely to be low due to the same factors identified by Russell. Still, their relative consistency with the rates found by Russell

provide rather strong evidence that rape in marriage is a widespread problem.

THE MARITAL RAPE EXPERIENCE

Perhaps one of the reasons that marital rape is ignored is that its trauma is not readily apparent. The thinking seems to be that if you've had sex with someone hundreds of times before, what's one more time? The problem with this attitude is that it assumes that the violation of rape is sex. While this may be an important element in the case of child sexual abuse (and is one of the reasons it is widely regarded as abhorrent), it is not the central issues for adults. For women, consent is the issue. Women's autonomy and bodily integrity are at stake. In the case of marital rape especially, it is the violation of self-determination and the breach of trust that are at the core of the rape. Unless one grants women the right to autonomy over their own bodies and understands the serious trauma that results from the violation of that autonomy, then one cannot understand rape.

At a Senate Judiciary Committee hearing, Alabama Senator Jeremiah Denton stated that, "The issue is whether the . . . drastic punishments for rape should apply. The answer depends on whether the anguish caused by intercourse forced by a husband is equivalent to that inflicted by intercourse forced by someone else . . . The character of the voluntary association of a husband and wife . . . could be thought to mitigate the nature of the harm resulting from the unwanted intercourse." (In Finkelhor and Yllo, 1985:137)

Senator Denton's idea that being married alleviates the harm of rape suggests that he is not sufficiently focused on the issue of women's autonomy. The shock, terror, and betrayal of wife rape are often *exacerbated* rather than mitigated by the marital relationship. Among Russell's survey respondents, the women who had been raped by their husbands reported greater negative long-term effects (including sexual dysfunction and the inability to trust men and or form intimate relationships) than victims of any other kind of rape. As one of Finkelhor and Yllo's respondents, whose husband had beaten and raped her, put it,

"My whole body was being abused. I feel if I'd been raped by a stranger, I could have dealt with it a whole lot better . . . When a stranger does it, he doesn't know me. I don't know him. He's not doing it to me as a person, personally. With your husband it becomes personal. You say, this man knows me. He knows my feelings. He knows me intimately, and then to do this to me - it's such a personal abuse." (1985:118)

Types of Marital Rape

When marital rape is considered at all, it tends to be subsumed under the broader phenomenon of wife-beating. Yet research indicates that while the two are closely related, it is a mistake to conflate them. Russell's study looked at the relative occurrence of these two forms of abuse. In over half of the marriages in which women were abused (54%), wife-beating was the major or only problem. In nearly a quarter of the marriages (23%), wife rape was the major or only problem. In over one fifth of these marriages (22%), wife-beating and wife rape were problems of approximately equal importance (1982:91). In sum, these data indicate that in nearly half of abusive marriages, marital rape is a significant problem. This means that efforts to intervene in domestic violence which do not explicitly address marital rape are overlooking half of the abuse that women experience.

If marital rape cannot be subsumed under the wife-beating rubric, then how is it different? In order to more fully understand the nature of marital rape, we need to go beyond the statistics. Finkelhor and Yllo (1985) identified three basic types of marital rape. The first type, *battering rape*, described the experience of the women who are the victims of physical beatings and forced sex. The sexual violence, often combined with verbal degradation, is an additional means by which husbands inflict pain and humiliation. Batterers who also rape appear to be at the more brutal end of the physical violence continuum. They often inflict serious physical injury and then force their terrorized and sometimes semi-conscious wives to have sex with them. The sexual violation appears to be the final debasement.

Nicholas Groth (1979) studied types of rapes in general, and these batterers' assaults seem to be consistent with his category of "anger rapes." These men are enraged and hateful and want to inflict serious harm. They use far more force than necessary to overcome their victims and the forced sex appears to be just one part of this broader dynamic of hostility.

Another type of marital rape, *obsessive rape*, seems to be the least prevalent but most cruel. Some obsessive rapists batter their wives apart from the forced sex and other do not. What sets them apart is their fusion of violence and sexual arousal. They are hypersexual and perverse; they are willing, and even prefer, to use force to carry out their sexual obsessions. Also, these men tend to be deeply involved with pornography. In the in-depth interviews conducted by Finkelhor and Yllo (1985), women reported that their husbands were aroused by

hitting and harming them during sex, used objects to rape them, planned sexual assaults, simulated stranger rapes, took degrading pictures, and kept written records and descriptions of the rapes. One woman described her husband's efforts to pull out her vagina with a pair of pliers. When she went to the hospital hemorrhaging, no one inquired about the cause of her injury.

These obsessive rapes are consistent with what Groth identifies as "sadistic rapes" in which aggression becomes eroticized and the victim's suffering is a source of pleasure for the perpetrator. It is important to note that the presence of sadism in these rapes should not be taken to imply a corresponding masochism on the part of the victim. While sado-masochistic sexual relationships do exist, they are characterized by the masochist's consent to certain scenarios. The victims of the obsessive rapes described above were unwilling participants who were forced into sex without their consent and despite their resistance.

A final type of marital rape is *force-only rape* which occurs in relationships that are generally free of other physical violence. The husband uses only as much force as is necessary to coerce his wife into sex. This coercion often involves just using his greater weight, size, and strength to hold her down. It sometimes includes twisting an arm behind her back or holding a pillow over her face. As terrifying as such bodily force can be, the husband's purpose does not appear to be the infliction of physical injury, but rather the overpowering of resistance. These relationships tend to be characterized by power struggles over issues such as money, children, and especially sex.

Force-only rapes are consistent with the dynamics Groth identifies in "power rapes" which are motivated by the desire for dominance and control. The goal is not so much to harm the victim as to possess her sexually (1979:25). It seems likely that the laws and cultural norms which condone forced sex in marriage contribute to the sense of sexual entitlement these husbands hold. Force-only rapes are very difficult to prosecute due to lack of injury and corroborating evidence, and because the perpetrators are men who do not, for the most part, otherwise violate the law. It is ironic that the marital rapists who are least likely to be convicted are probably the ones who would be most restrained by laws, institutional responses, and social norms which clearly condemn forced marital sex. It is *their* wives who would be most empowered by clear recognition of their autonomy and right to self-determination. Perhaps it is

this paradox that explains the strong opposition of many legislators and attorneys to the criminalization of rape in marriage.

CREATING INSTITUTIONAL CHANGE REGARDING MARITAL RAPE

Marital rape is the form of domestic violence which is least recognized and least understood despite (or perhaps because of) the high frequency with which it occurs. It is also the form of abuse within the home that has received the least attention from practitioners and activists. Regardless of the particular systems within which we work, there is a widespread problem with the attitudes of the individuals we work with. At best, people see that marital rape is a problem, but they tend to ignore it in their day-to-day work and thereby condone it. At worst, they view marital rape as a contradiction in terms and an invention of feminists trying to gain unfair advantage for vindictive wives involved in messy divorces. Across the board, we need to improve our recognition and understanding of rape in marriage. Only then can we begin to develop effective interventions.

In the following brief sections, suggestions are offered for the ways in which practitioners in various systems can begin to address the problem of marital rape. The first step in *all* of the systems, however, is to begin to ask about it. We need to break the silence surrounding marital sexual violence.

Criminal Justice

As the discussion earlier indicated, significant changes have been made in the laws concerning marital rape. The full spousal exemption which existed across the United States fifteen years ago has been eliminated. Yet thirty states continue to limit married women's equal protection under the rape law. State legislators and the activists working with them must raise the issue of marital rape again and again and propose new legislation, even if they were forced to compromise a few years ago in order to even partially criminalize. Efforts to fully sanction sexual violence must continue until all women are legally protected from rape.

As far as police and the courts are concerned, there needs to be fuller recognition and

response to enforce the laws that are on the books. There has been an extensive process of training police, prosecutors, and judges about battering. However, these trainings typically ignore the issue of marital rape. The laws which need to be brought to bear are quite different from assault and battery statutes. Depending on the state, they may be different from the general rape laws as well. Furthermore, the attitudes of criminal justice personnel will be quite different, with less acknowledgment of the violation of marital rape and more skepticism about the victim's motives for pressing charges. Victims will be very reluctant to talk about forced sex unless the matter is handled very sensitively. Nevertheless, activists and trainers should make every effort to encourage local police and courts to include questions about forced sex every time they make inquiries into domestic assaults. Criminal justice personnel also need to be open to reports of marital rape which are not accompanied by other physical violence. Difficulty of successful prosecution is not an adequate reason to ignore all instances of criminal violation. Restraining order affidavits, too, should explicitly ask about forced sex. The research indicates quite clearly that because of the stereotypes about rape, victims of wife rape will not automatically define their own experience in those terms. Questions focused on the threat or use of physical force to have sex will elicit much fuller responses.

Health Care

As research on the medical response to wife-beating has documented, hospital emergency rooms have addressed physical injuries but not their cause or context. Given the reluctance of hospital personnel (as well as practitioners in private practices and HMOs) to deal with the social aspects of battering, it is not surprising that forced sex as a concomitant of the other violence is completely ignored. Hospital protocols for treating battered women should include questions about forced sex. If marital rape turns out to be an element of the assault, women should have the option of having evidence of sexual assault gathered, just like other rape victims. Although the defense would certainly be that the perpetrator is her husband and the sex occurred but was consensual, the fact that the victim indicated she had been forced would certainly strengthen any criminal case.

Another important arena for addressing the problem of marital rape is not directly connected to battering and its treatment. Women's health care providers must increasingly deal

with the rapid spread of AIDS through heterosexual intercourse. Most current initiatives focus on educating women about safer sex practices. This approach ignores the reality that many women may *know* about the need for condoms if their partners have been exposed to HIV, but are unable to resist unprotected sex because of their partners' use of force. Health care providers who simply ignore this reality are not doing as much as they might to protect their patients' health.

Mental Health

Every day, therapists and other practitioners come into contact with marital rape victims in a setting which offers services to married and cohabiting women. Yet domestic violence, physical or sexual, remains invisible to most of them. Most practitioners (whether psychologists, psychiatrists, social workers, pastoral counselors, marriage counselors, or sex therapists) have been trained to see mental health problems through theoretical lenses which ignore issues of gender, power, and violence. While wife-beating has become more visible and more of an issue in various subfields, marital rape has hardly been addressed at all. A fuller discussion of theoretical blinders and their implications for therapeutic practice with abused women is far beyond the scope of this introduction. Still, a valuable first step for all clinicians would be to think about the fact that a significant proportion (10-14% of representative samples and certainly a higher percentage among help-seekers) of the adult women they see have been sexually assaulted by their intimate partners. They need to think about what that means for clients and their relationships and for potential interventions. They should also keep in mind that questions about forced sex and other violence should not be raised in the presence of a woman's partner so that candid information can be obtained and, most importantly, her safety protected.

Service Providers and Advocates for Battered Women and Rape Victims

The past twenty-five years have witnessed an explosion of feminist grassroots organizations, programs, health centers, shelters, hotlines, and rape crisis centers. The positive impact of these efforts on the lives of millions of women should not be underestimated. Nevertheless, we need to recognize that marital rape victims have fallen between the cracks. They very rarely contact rape crisis centers because they share the widely held view that "real"

rape is stranger rape. Even efforts to increase public awareness of acquaintance rape and date rape have inadvertently implied the nonexistence of marital rape. Rape crisis centers have had their hands full with the victims that have turned to them for help and have made little effort to reach out to women who have been raped by their husbands.

Battered women's shelters, by contrast, focus heavily on husbands and cohabiting partners, yet they have ignored the sexual dimensions of the violence. Women report that they have been asked to describe the most heinous physical abuse to shelter staff, yet they have never been asked about forced sex and they are too ashamed to bring up the matter themselves. When discussion of marital rape is not initiated by shelter staff, advocates, or group leaders, many battered women feel that they are the only ones who experienced sexual violence in the context of a beating. Furthermore, marital rape victims who are not otherwise battered or injured do not see shelters as an option for themselves. Being raped by your husband has not, in and of itself, been identified as a form of violence that shelters deal with.

Despite their politics and experience with violence, advocates and activists have a hard time dealing with rape in marriage. Listening to the stories of women's sexual abuse and even torture at the hands of men who vowed to love and cherish them is extremely painful. And it feels more shameful as well. Admitting our own discomfort with marital rape is an important first step in beginning to adequately address the problem and provide its victims with the support and intervention services they need.

REFERENCES

- Groth, Nicholas (1979) *Men Who Rape*. New York: Plenum Press.
- Hale, Matthew (1680) *History of the Pleas of the Crown*. Vol. 1 (Emlyn, ed., 1847).
- Hite, Shere (1979) *The Hite Report on Female Sexuality*. New York: Alfred A. Knopf.
- Finkelhor, David and Kersti Yllo (1985) *License to Rape: Sexual Abuse of Wives*. New York: Free Press.
- Russell, Diana (1982/1992) *Rape in Marriage*. Newbury Park, CA: Sage (reissue).
- Yllo, Kersti and Murray Straus (1983) "Interpersonal Violence among Married and Cohabiting Couples." In Olson, D. and B. Miller (eds.) *Family Studies Review Yearbook*. Beverly Hills, CA: Sage. Vol. 1, pp 308-315.

Kersti Yllo, Ph.D.
Department of Sociology, Wheaton College
Norton, Massachusetts 02766