



**“I Do” Not Consent: Gaining Legal Protection
for Marital Rape”**

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Abstract

Marital rape is a specific form of sexual abuse between spouses that occurs when one spouse forces the other to perform and/or receive sexual acts without their consent. This paper analyzes the ongoing issue with spousal exemption laws and the lack of protection for spouses who become victims of marital rape. Spousal exemption is the theory that if two people are joined through the sacrament of marriage, it is not necessary to obtain consent from each other before engaging in sexual activities. This paper aims to answer the following question: How can victims of marital rape best be afforded legal protection? In order to answer this question it is necessary to compare the outdated laws in certain states and evaluate where change has been made and what spousal exemption laws still need to change.

I. Introduction

Due to the legal structures defining a relationship between a husband and wife, marital rape is an act of sexual abuse that is often ignored. Some states still have spousal exemption laws in place to protect men from prosecution in cases where a man's sexual advances are not solicited by and are unwelcome to their wives. Through spousal exemption laws, a concept of implied consent formed when referring to rape between a married couple. This is due to legislation being known to protect offenders. As researcher Aubrey Jackson writes in her article for *Social Science Research*, spousal exemption laws “limit women's rights to bodily self-control and personhood and heighten men's state-sanctioned power over women by allowing them unrestricted sexual access to their wives” (291). States that allow any form of the exemption law claim that its purpose is to protect the unity between spouses, and that it is in the states' best

interest to do so. By having this exemption, men are empowered to rape and abuse their wives since they are untouchable through law. It is critical that advocates work to distinguish these laws to gain legal understanding and social acknowledgement of the issue of marital rape.

Given the complexity of this issue, this research paper proposes to answer the following questions: How can the victims of marital rape best be afforded legal protection? Whose responsibility is it to protect women who are victims of sexual abuse within marriage? Does the state government have the legal right to have any form of a spousal exemption law put into place? Marital rape is recognized on a federal level and exemptions are repealed by the federal government, not by each individual state. There are a number of steps that can be taken to legally protect victims of marital rape, but the most important measure is overturning the “spousal exemption” law in states that continue to uphold it. In an article published in *Florida Law Review*, author Robin West writes that supporters of the exemption “typically assert that the state's important interest in promoting marital harmony and intimacy, or, its interest in encouraging reconciliation of warring spouses, justifies the statute” (64). This argument suggests that states claim they need to protect marital harmony, but while doing so, they are promoting an abusive relationship.

Feminist legal theory, or feminist jurisprudence, pioneered in the 1960's by Ann Scales, is the theory that laws have been the foundation of perceived inferiority and social subordination of women throughout history (83). The theory structures the controversial debate of marital rape and exemption laws in order to put into perspective how the government injudiciously protects men over women. This research paper will consider the roles of advocates and government courts when intervening on cases of marital rape and suggest that protection for abusers is unconstitutional and spousal exemption laws should be reassessed. To a great extent, the

argument follows that of Ann Scales' feminist legal theory, as articulated in "Legal Feminism: Activism, Lawyering, and Legal Theory," with a slight deviation specifically focusing on the role of feminist jurisprudence when pertaining to the spousal exemption law.

II. A Short History of Marital Rape

Gender stratification, which refers to the social construct that men have a higher status than women, enables the continued existence of spousal exemption laws (Jackson 290). This further develops the idea that men are not to be held responsible for giving into their sexual tendencies and also creates rape myths, which refer to theories people have about rape while challenging the idea that all rapists should be held responsible (Ferro et al. 764). These beliefs do not come as a surprise when considering the history of marital rape. As early as 1857, the state of Massachusetts acknowledged that a man has the right to have sex with his wife without her consent. This law soon became recognized by every state throughout the country. A woman was considered her husband's property, and the 'unities theory' "confirmed that marital rape could not exist because a husband could not steal his own property or commit a crime against himself" (Martin et al. 331). Progressing almost 120 years, the Equal Rights Amendment passed, offering a protection of legal equality between sexes and prohibiting discrimination on the basis of sex. In 1976, Nebraska became the first state to repeal the spousal exemption law. By 1983, seventeen states got rid of the exemption, while others still held on to some form of it (England 1). In 1985, psychologists Finkelhor and Yllo distinguished three existing categories of marital rape laws throughout the country; absolute exemption, partial exemption, and no exemption. Absolute exemption and no exemption are self explanatory, but in "A Review of Marital Rape," the authors describe partial exemption as "states that allow marital rape in certain cases or only sanction it when the couple is living apart, legally separated, or divorced" (Martin et al. 331).

The variance between different laws would cause inconsistency around the country that would eventually need to be leveled out.

On June 23, 1993, the issue of marital rape hit a turning point when Lorena Bobbitt admitted to cutting off her husband's penis, being that he had been raping her for the entirety of their four year marriage. At the time, John Bobbit was only charged with marital sexual assault due to the fact that the state of Virginia did not recognize rape in cases where couples were living together, unless there was evidence of physical violence against the victim. Lorena was charged with malicious assault but was found not guilty due to temporary insanity. John was acquitted of the charge of rape due to Virginia law, found not guilty on all remaining charges of sexual assault (Peele). In November of 1993, as people watched "on late-night television, the Bobbitt case [became] a punchline. But to some women's groups it [symbolized] the legal system's treatment of domestic violence" (Labaton 1). This case sparked debate throughout the country; it was understood that political changes had to be made. By 1994, President Bill Clinton passed the Violence Against Women Act, which provided protection to women who were victims of domestic abuse (Lynch 1).

As soon as 1996, all states in the U.S. revoked the original spousal exemption law, but some states revised their laws to preserve a difference between marital rape and non-marital rape cases (Lynch 1). By 2002, only twenty four states completely abolished spousal exemption laws. In "Current Perceptions of Marital Rape," it is clear that a trend exists between government decisions and public opinion, seeing as "recently as 2002, Basile reported that rape myth acceptance is relatively high among U.S. citizens. Rape still tends to be viewed as less serious, and less physically and emotionally damaging, than are other violent crimes" (Ferro et al. 765). In order to gain a better understanding of the public opinion, the authors conducted a study in

2008 and found that people tend to be more forgiving towards marital rape abusers as opposed to rapists that are strangers (Ferro et al. 764). This concept is illogical, as “the use of relationship status to determine whether a crime has occurred reflects the ways in which our attitudes about rape vary depending on the victim–offender relationship” (Ferro et al. 765). To resolve the issue of marital rape, there needed to be public understanding about the topic, which did not exist up until this point.

III. Using Feminist Legal Theory to Overturn Spousal Exemption Laws

Ann Scales’ theory of legal feminism explains how since the 1960’s, laws have been put into place to suppress the rights of women. These laws have allowed for validation of gender stratification. Furthermore, the concept of spousal exemption laws directly place women in social statuses that are inferior and subordinate to men. In cases of marital rape, it is important to abolish these laws and gain awareness and legal protection for women in abusive relationships. The article “Criminalizing Spousal Rape: The Diffusion of Legal Reforms” published in *Sociological Perspectives* introduces a 2009 campaign run by marital rape victim advocates referred to as the ‘Rape Law Reform Movement,’ which exists for the sole purpose of refining spousal exemption laws within the government. In their campaign the statistic arose that “the percentage of the labor force comprised of women is positively related to the elimination of the marital rape exemption” (McMahon et al. 518). There is a direct relationship between the statuses women hold in society and the marital rape exemption law being eliminated in those states. According to the feminist legal theory, changing laws that solely empower men would lead to better social statuses for women, and subsequently allow for such laws to be reviewed. Considering the fact that more women are becoming financially independent and society is allowing for women to thrive in their work environments, there is legal pressure to eliminate the

marital rape exemption law. When women prove to the community that they have control of their daily lives, they are more likely to have a say when it comes to creating new legislation and adapting to new societal needs. Feminist legal theory advocates for “challenging the exclusion of women from equal opportunities of all sorts. The thrust of the approach was to argue for neutrality in legal standards, that is, for a legal rule regarding women that ‘did not take sex into account’” (Scales 84). The approach is meant to challenge laws that allow for the oppression of women to continue both legally and socially. Specifically, changing laws to apply to both men and women with no regard to their sexes leads to the solution of gender stratification.

Advocates for the spousal exemption law believe in the concept of implied consent through marriage along with various other rape myths, leading to the continuous subjection of women. In the case of Jennifer Teeson there should have been more than sufficient evidence to prosecute her husband, including video evidence. In February 2019, Jennifer Teeson was going through her documents on her home computer and came across a video that shocked her. The video was evidence of her husband drugging and raping her in their home, in front of their one year old child, over a year ago. She had no knowledge of the events portrayed in the video and decided to press charges. On February 22, 2019 Jenny Teeson’s soon to be ex-husband was found not guilty when charged with drugging and raping her, even with video evidence. His actions were validated due to Minnesota being one of twelve states in the United States to still have some form of the spousal exemption law (Montemayor 1). Jenny Teeson was disappointed that the law was put into place to protect her husband from prosecution but not to protect her from domestic sexual abuse. The societal view on marital rape tends to be clouded by theories that not all rapists should be held legally responsible for their actions. According to feminist legal theory, laws are put into place to keep women in inferior positions to men legally, but also

with an agenda to keep women inferior socially. Jenny Teeson tried to prosecute her husband for drugging and raping her but rape myths allowed for the continuance of spousal exemption laws to protect abusers. Unfortunately for victims, when it comes to a trial by jury, rape is seen as a less serious violent crime, even though research shows that “victims of marital rape suffer from debilitating psychological problems and disorders” (Martin et al. 343). Victim blaming refers to the theory that the victim of a crime is somewhat responsible for the harm committed towards them (Martin et al. 330). When comparing rape to other violent crimes, for instance armed robbery, US citizens tend to believe that being robbed at knife point takes more of a toll on someone than being raped would (Ferro et al. 765). Victim blaming is not discussed when an armed robbery takes place because no one can argue a victim consented to being robbed. Supporters of spousal exemption believe that victims of marital rape had implied consent, or may have given consent in the past, and their abusers simply got the wrong message. This belief makes it more difficult for victims to report their abuse, since they have already suffered great trauma and will still be blamed for what they have gone through. In order to resolve the issue of victim blaming it is critical to gain public awareness for marital rape victims. In the article, “The Right to No,” written by Melanie Randall and Vasanthi Venkatesh, the authors write that “some assaulted women report acquiescing to unwanted and coerced sex with their abusive male intimate partners, precisely to avoid episodes of physical violence” (158). This demonstrates that without proper legal protection for women in abusive relationships, victims tend to refrain from reporting their abuse in order to avoid further acts of mistreatment from their husbands. Ann Scales’ theory implies that laws are created in ways that allow for gender stratification. The fact that laws of this nature even exist means that victims often suffer through their abuse and do not report it because they do not have confidence in the law to adequately protect them.

By applying Ann Scales' theory of legal feminism to spousal exemption laws, it becomes evident that this law was created to allow men to overpower women. Some believe that there is no possible way a man can take advantage of his wife, being that he has the right to her body through marriage. Supporters of the theory uphold that rape is only present in a situation where a stranger rapes a woman spontaneously. The irony of this view is that "contrary to popular belief, rapists are not strangers lurking in dark alleys or hiding behind bushes looking for their next victims; rather, the majority of rapes involve a victim and an offender who had a prior relationship before the rape occurred" (Ferro et al. 765). This fact about rapists proves that they tend to know their victims and have been planning the rape, due to a preexisting relationship. The fact that most rapes are between victims and offenders who knew each other makes it clear that a preexisting relationship of any kind does not imply consent for the future. Advocates for spousal exemption argue that if consent is given at any point in the past, then it is valid at any time. The fact of the matter is that consent can be withdrawn at any point with any partner, and failure to comply directly results in sexual assault. This description of consent should simplify the prosecution of marital rapists, since the reality still stands that marriage does not imply consent.

IV. Future Challenges and Opportunities

It seems as though marital rape laws have come a long way, but there is still work to be done in order to afford the best form of legal protection to victims. Chanelle Gallant published an article for *Truthout* website advocating for the rights of marital rape victims, indicating that there is minimal awareness being spread on the issue. Gallant states that the "majority of Americans said they believed people were not sensitive enough about sexual harassment. One thing hasn't changed though. We're still not talking about sexual harassment in our intimate partnerships and

marriages” (1). She writes to gain awareness for the cause and asserts that people believe there is not enough sensitivity when it comes to sexual harassment, but the issue of marital rape is not being addressed as much as it should be. She also suggests that the root of the problem with spousal exemption laws is attributed to the patriarchal society that still exists today. Ann Scales’ Feminist Legal Theory supports this claim, stating that laws are put into place to protect men and keep women inferior to them. In support of movements to repeal spousal exemption laws, there have been events in public areas and college campuses to raise awareness. These movements tend to be focused in states where there are still forms of exemption laws in order to push legislators to make changes (Gallant 1). Specifically, the Rape Law Reform Movement was created in 2009 to support victims and advocate for changes in legislation (McMahon et al. 518). As a way to better understand the complexity of the issue, survivors attend these events and share their experiences with the laws restricting their self-sovereignty and promoting gender stratification. Marital rape tends to be seen as a less serious crime than rape committed by strangers, although victim-offender relationships should not determine the severity of punishments for abusers.

In order to gain legal protection for marital rape victims it is crucial that there is public awareness on the topic. Though there are advocates fighting for the rights of victims, “sexual violence in intimate relationships is still among the more privatized and least remedied forms of gender violence and insufficiently recognized human rights problem” (Randall et al. 157). With no public awareness or understanding of marital rape, lawmakers will not see the need to make changes to current legislation. Researchers McMahon-Howard, Clay-Warner, and Renzulli claim that the “political environment affects the success of legislation advancing the rights and protections of women”(509). They further this argument by stating that they “expect liberal

government ideology to be positively associated with the passage of strong marital rape laws” (McMahon et. al. 509). In order to make changes to legislation regarding marital rape, the government and the public must agree on the severity of the topic. States should not hold the power to shield spouses from prosecution when they rape their partners. The political climate makes it difficult to afford certain rights to women, but it is the responsibility of the government to enforce equal rights among all citizens. This includes maintaining the self sovereignty of women.

To victims of marital rape it is evident that legislation regarding this topic is in need of immediate change. Robin West supports a form of feminist legal theory that she refers to as the inequality theory. She proposes a concept of legal protection in the form of a law being passed by the federal government. This law would not tolerate any form of differentiation between rape within marriage and would also “guarantee, consistent with the antistatutory mandate of the fourteenth amendment, that states would not perpetuate or insulate the sexualized social, private, or intimate subordination of women by men” (West 76). The important point here is that victims put their faith and trust into the government and rely on authority to protect them. In reality, the government tends to be the source that restricts the rights of victims and makes it more difficult for them to report and charge their abusers of rape. Ann Scales’ theory supports this statement because it reinforces that laws are created by the government in order to facilitate male superiority in society. Current supporters of the marital rape exemption claim that the laws should be kept in order to protect men from false accusations. believing that it would be too difficult to prove rape because consensual sex most likely occurred in the past. They also claim that “other laws, such as assault and battery, provide a raped wife with avenues for recourse that are less fraught than bringing rape charges against her husband” (England 1). The fact that

people believe there are other avenues for pressing charges is both offensive and unjust. Victims have the right to press charges against their abusers for the crimes committed against them and they should not be forced to settle for a less serious accusation based on the sole fact that they are married to their abusers.

V. Conclusion

Now that the legal and social aspects of marital rape are explained, along with a feminist legal theory application, Jenny Teeson's case can be reconsidered. Throughout this case, the general public was outraged that she had no legal protection against her husband after he drugged and raped her. The state of Minnesota had a spousal exemption law to protect men from being prosecuted for raping their wives, therefore Jenny Teeson was not able to obtain justice for her abuse. The state of Minnesota then repealed their exemption law due to public awareness and opinion on this case. Minnesota's democratic representative, Zach Stephenson, led the repeal movement, saying, "We like to think of so-called marital rape exceptions as an artifact of history, as a relic of a time when a woman was considered the property of her husband" (Vagianos 1).

Though the state of Minnesota made changes in spousal exemption laws, there are still eleven states in the U.S. that uphold exemption laws in some way, shape, or form. In order to justify the exemption, these states have partial exemptions when it comes to reporting a rape that occurred within a marriage. For example, some exemptions include only prosecuting when there has been evidence of abusive force or of a man drugging his wife. Other states require that spouses not live together if a woman intends to report her husband for raping her. In most rape cases there is a statute of limitations to report the abuse, which ranges from three to thirty years depending on the state. In cases of marital rape, certain states have limitations requiring that the abuse is reported in as little as thirty days. Although it is recommended that sexual abuse is

reported immediately to gather as much evidence as possible, some victims need more time to process their abuse and decide whether or not they intend on reporting it. However, thirty days may not be enough time for them. Partial exemptions and limitations can be seen as a way to indirectly protect men from prosecution, which supports Ann Scales' Feminist Legal Theory that states laws are a fundamental aspect in the subordination of women. The main issue with these limitations is that they do not consider the fact that victims can be emotionally coerced into unwanted sexual acts and may comply with their abusers to avoid further harm.

In order to gain adequate legal protection for victims of marital rape, existing forms of spousal exemption laws must be overturned. It is important to recognize that despite the fact spousal exemption laws have been changed in many ways, there is still more work to be done. Rape is a heinous crime that can be charged on a federal level. Taking this into account, marital rape should not be any different. This would allow for national understanding of the issue and it would promote public awareness. It is also critical to consider that the issue of marital rape is not limited the United States. Marital rape is a global contemporary issue and worldwide protection for women is not in the condition it should be. Though the issue of marital rape is extensive, it is solvable. The first step to abolishing spousal exemption laws is to gain public awareness and government action. The problems of spousal exemption laws must be addressed and understood. If these laws are not addressed, women throughout the country will continue to suffer in abusive relationships with no legal protection.

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