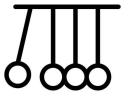


TURKEY'S UNHEARD VOICES

The Legal Grey Areas in Marital Rape Laws Across the World

LAW

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Abstract

Marital rape is a form of sexual violence that has historically been ignored by legal systems and legitimized under the pretext of the privacy of the institution of marriage. Even today, in many countries it is not explicitly defined as a crime or remains within legal loopholes. This situation both restricts victims' access to justice and poses a serious threat to gender equality. The assumption that consent exists within marriage means disregarding an individual's rights over their own body. However, sexual consent is a right that must be freely and continuously expressed in every relationship, including marriage. International law defines marital rape as a violation of human rights; nevertheless, due to social perceptions and deficiencies in legal practice, this form of violence still remains invisible. This study examines the historical background, social and legal dimensions of marital rape, as well as how it is addressed in international law, in order to reveal the multi-layered nature of the problem.

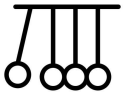
The Historical Continuity and Legitimation of Marital Rape

Marital rape refers to sexual assault or being forced into sexual intercourse without the spouse's consent. Throughout history, this act was not considered a crime for a long time because consent within marriage was assumed in many legal systems (Equality Now). This approach also aligns with the traditional belief that a spouse automatically has the right to sexual relations. Even today, in many countries marital rape is either not explicitly recognized as a crime or is assessed within legal loopholes, thereby escaping criminal sanctions. This situation both hinders victims' access to justice and contributes to the legitimation of sexual violence.

The failure to legally recognize marital rape not only leads to individual rights violations, but also contributes to the normalization of violence against women at the societal level. This constitutes a violation of one of the fundamental principles of human rights: the right to bodily and sexual integrity (United Nations General Assembly, 2006). From the perspective of the women's rights movement, ignoring sexual violence that occurs within institutional relationships such as marriage is one of the greatest obstacles to achieving gender equality. For this reason, explicitly criminalizing marital rape and punishing it effectively should be regarded as an essential part not only of individual justice, but also of broader social transformation.

The Concept of Marital Rape

Marital rape generally occurs through physical force, threats, psychological pressure, or economic dependency. Although sexual violence is recognized as a crime in society at large, when it occurs within the institution of marriage many legal systems either do not



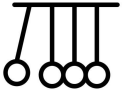
explicitly define it or do not include it within the scope of criminal punishment. This is rooted in the sanctity attributed to marriage and the perception of sexuality between spouses as a “natural right.” However, the marital relationship does not eliminate the parties’ need for consent over each other’s bodies. Consent is a fundamental principle that must exist in every type of relationship, including marriage. It should not be forgotten that marital rape is not only a physical assault, but also a violation of an individual’s will, privacy, and control over their own body. For this reason, rape committed within the context of marriage should not be separated from other forms of sexual violence, but rather addressed with the same seriousness and gravity.

The Concept of Consent

Consent refers to the clear and ongoing agreement given freely by the parties in a sexual relationship, without any pressure, threat, or coercion. This concept is accepted as a fundamental معيار in the fight against sexual violence. However, in many societies there is a widespread false belief that consent is “automatic” within marriage, meaning that once married, a spouse has no right to refuse sexual relations. Yet marriage does not eliminate individuals’ bodily boundaries, and sexual relations must always be based on consent. Moreover, consent is not a one-time approval, but a will that must be renewed and clearly expressed each time. In this context, “being married” does not mean consent, nor does it provide continuous permission for sexual relations. The denial of consent constitutes sexual assault, even within marriage. The failure of the law and society to clearly recognize this distinction causes marital rape to remain invisible and pushes victims into silence (UN Women).

Gaps in Legal Definitions

The fact that marital rape is not explicitly defined as a crime in many countries points to a significant legal gap. In some legal systems, while the crime of rape is defined, no specific provision is made for cases in which the perpetrator is the victim’s spouse, or the marital relationship is accepted as an “exception” that removes criminal liability. This situation renders sexual violence within marriage invisible and prevents victims from benefiting from legal protection. Laws that do not recognize rape in the marital context as a crime both leave perpetrators unpunished and legitimize sexual violence within the boundaries of marriage. Furthermore, in some countries marital rape is punishable only if additional elements such as “severe violence” or “unlawful confinement” are present, which further complicates victims’ pursuit of justice (Equality Now – The World’s Shame: The Global Rape Epidemic). The legal gap is not only reflected in statutory texts, but also in practice; police officers, prosecutors, and judges often view sexual violence within marriage as a private matter, dismissing cases or failing to treat them with the seriousness they require. Therefore, it is not sufficient merely to enact legal reforms; it is equally important that legal systems implement these regulations effectively.



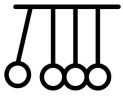
Social Perceptions

Social perceptions play a powerful role in sustaining victim myths and the impunity of perpetrators in cases of marital rape. In particular, the widespread false belief that “being married means sexual consent” makes it difficult for these acts to be recognized before the law. For example, a study conducted in Türkiye found that participants tended to blame the victim and view the perpetrator more leniently in situations perceived as threatening the man’s “honor.” Similarly, public attitudes toward married rape victims increase the blaming of women while facilitating the legitimization of the perpetrator’s actions. These cultural codes are also reflected in inconsistent approaches among police officers, judicial personnel, and family members. For instance, some police officers hold the view that “sexual violence within marriage is a private family matter” and therefore do not take complaints seriously. Although marital violence has been brought under criminal law at the international level, large segments of society still continue to perceive it as “a الزوج’s right” or as “fate.” Social norms lead to the stigmatization of victims within sexist stereotypes; for example, their rights are neglected through arguments such as “blaming them for resuming the relationship” and “the sanctity of the private sphere.” For this reason, legal regulation alone is not sufficient; transformation in social awareness and attitudes is also of critical importance.

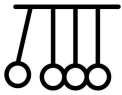
The Situation in International Law

Although marital rape is not explicitly named in many international human rights treaties, it is evaluated within categories of violence defined in a way that encompasses this act. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges states to prevent, prosecute, and punish all forms of violence against women. In its General Recommendations No. 19 and No. 35, CEDAW clearly states that sexual violence against women in all private relationships, including marriage, constitutes a violation of human rights (CEDAW General Recommendation). These recommendations emphasize that impunity for marital rape undermines women’s human dignity and violates states’ positive obligations. Furthermore, the Istanbul Convention, prepared by the Council of Europe, is one of the first binding international instruments to explicitly recognize marital rape as a form of sexual violence. Article 36 of the Convention defines any sexual act without consent as a criminal offense and stresses that being married cannot serve as a ground for “exemption” (Council of Europe – *Istanbul Convention*). Despite this, some states have failed to make the necessary amendments to their domestic legislation or to implement these obligations effectively in practice. The United Nations Human Rights Committee has classified marital rape under torture and inhuman or degrading treatment, reporting that the impunity of perpetrators causes lasting trauma to victims. Therefore, international law treats marital sexual violence not merely as an individual issue, but as a serious concern in terms of the state’s obligation to protect human rights.

Marital rape, as a form of sexual violence that has historically been ignored and legally and socially legitimized, continues to exist in a grey area in many countries today. Traditional beliefs that marriage grants unlimited sexual access to one’s spouse render this



crime invisible and hinder victims' pursuit of justice. However, whether an individual is married does not eliminate the requirement of sexual consent. International human rights conventions clearly emphasize that sexual violence within marriage, like all other forms of violence, constitutes a crime and must not go unpunished. Alongside the inadequacy of legal regulations, inconsistencies in practice and social prejudices also deepen the problem. In this context, recognizing marital rape is not only a matter of legal reform, but also one of social confrontation and transformation. Accepting sexual consent as a universal right independent of the institution of marriage is a fundamental requirement for the realization of both individual freedoms and social justice.



Resources

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