



WIFE RAPE, SEX, LAW

With lawful rapes by husbands exceeding stranger rapes by seven to one, few would doubt that the law on marital rape is outdated and requires reform. The widely reported case of the man jailed for three years for the violent, attempted rape of his wife while the couple were living apart without being legally separated was hailed as a breakthrough in the area. And why? Because for the first time in this country, on the 30th July, 1990, a judge used his 'commonsense' in interpreting the Common Law and accepted that by physically withdrawing from cohabitation the wife had made it clear that she no longer gave her consent to have intercourse with her husband.

Not all women are in a position to adopt this self help remedy when they find themselves in an unhappy marriage. The constraints of children, shelter and financial dependency severely restrict the choices available to many married women. Though the Leicester Crown Court decision is welcome in widening legal recognition of a woman's rights over her sexuality, it also emphasises the lack of equal rights and entitlements that go hand in hand with a marriage contract. So what are women letting themselves in for when they get married? What rights do they have if they are unable to leave? Is it their duty to accede to their husband's sexual demands and proclivities?

It is hardly surprising that the law on marital rape is in such a state of confusion when the question of the law regarding what is appropriate sexual intercourse is unclear. And it is evident that there remains a fundamental confusion between rape and sex which is compounded by marriage contact.

Where forced sex is accompanied by violence the legal facts of the case are less likely to be disputed by a court, unless the woman is married to the rapist. One can only speculate as to whether the judgement in the case referred to above would have been different had the husband not used actual and threatened violence with the attempted rape. In England and Wales, the legal definition of rape revolves around the question of consent rather than force. The line, however, between consent and coercion is far from clear, particularly when a man and woman are living together and have an ongoing sexual relationship.

Lack of consent means against a

woman's will. But is sex without explicit consent, rape; by not saying 'yes' is a woman saying 'no'? Does the existence of sex and marriage preclude rape and is rape without sex possible? And what about sexual foreplay when used to 'persuade' a woman to consent to sex? Should, even could, this constitute attempted rape?

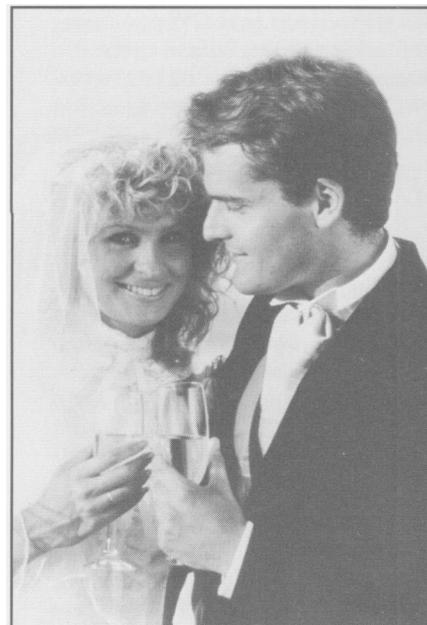
Until recently little could be said about women's experiences of sex and rape within marriage. In the last two decades there has been a substantial increase in the research literature on marital violence which has contributed greatly to our knowledge of the susceptibility of women, as wives and cohabitees, to the most harrowing and repeated forms of violent physical and sexual abuse.

What has been lacking to date is a national survey which is representative of women's experiences. This article reviews the main findings of the first national survey to focus exclusively on wife rape. It contributes statistical data to further public understanding of a particular aspect of wife abuse which is legally non-existent in England and Wales (Scotland got it right last year). The survey was initiated in response to the legal myopia and anomalies in the rape laws as they apply to married women and it is especially valuable because the women sampled do not represent the most extreme cases of rape so often the subject of media coverage and feminist accounts of rape trauma. It is therefore more likely that the findings are representative of a range of typical experience of disinclined, unwilling and forced sex in marriage. The extent and frequency of rape can only be described as shocking.

The survey found that marital rape was the commonest form of rape and that one in seven married women had been raped by their present or previous husband; that is if the legal definition of rape as sexual intercourse without consent applied to them. One in two rapes involved threats and or use of violence and if this were not sickening enough, one in five of the women raped were pregnant at the time. Others had recently given birth:

'My ex-husband raped me when our first child was 6 weeks old; before I'd been for my post natal, therefore I was not protected. He hoped to make me pregnant again so I'd keep him.'

The 'one off' rape was rare. Once rape occurs in marriage, it continues to occur frequently. Four out of five of



Marriage looks different when the champagne goes flat

women raped, stated that they had been raped more than once. Half of those women raped with violence had been raped six times or more.

According to the survey, wife rape was something which could occur to any married woman, regardless of her social characteristics. Though wives raped did not differ significantly from those who were not, it did appear that wife rape was focussed by social class and geographical region. Women in social class DE were twice as likely to be raped and three times more likely (12%) to have violence threatened or used with the rape, then women in social classes AB (6%). Interpretations must be made with caution since the disparity between women may reflect differences in willingness or capacity to define and disclose experiences as rape, rather than to differences in the incidence of rape itself. Rape in Scotland was twice that of the rest of the country but there is no way of knowing how much legal recognition of marital rape which occurred in Scotland in 1989 has affected women's awareness of the issue and the extent to which this has skewed the findings.

Clearly wife rape was a factor leading to marital breakdown. Divorced and separated women had the highest reported incidence of rape; one in three compared to one in nine married women. Over half of those women threatened and beaten and raped were divorced or



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separated.

Women's tolerance to the unwanted sexual demands of their husbands in marriage was remarkable. Six out of ten women said that they had sex with their husbands when they did not really want to, for example when they were 'tired, disinterested or unwell' and none of the women regarded this as 'rape'. One in seven wives thought it their duty always to have sex with their husbands whenever he wanted it which seems to indicate that the notion that it is a wife's duty to provide sex is still prevalent. Other women regarded it as considerate to provide sex whenever their husbands required it:

'I think it is being considerate to your partners feelings if you consent to have sex, even if you are feeling tired or whatever. And I don't regard this as "force" or "against consent". I would expect him to consent to me if he was tired also.'

Sex was interpreted differently by women and men. Many commented that, 'For women the sex act is different than for men' and it appeared that the interpretation put on sexual behaviour as a pleasurable activity, a duty, or rape, depended more on the quality of the

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emotional relationship as much as the physical act itself.

For those worried that changing the law on marital rape will lead to a flood of cases coming before the courts, the survey would indicate this to be unlikely. Married women were not prone to 'cry rape'. Not only did women differentiate those times when they had sex when 'disinclined' from 'rape', it was disheartening to find that half of the wives who had clearly refused their consent and a quarter of those who had been raped, threatened and beaten did not consider these incidents to be 'rape' either at the time the incident occurred, or on reflection.

If consent is difficult to define then so is coercion. The pressures brought to bear on women to have sex against their will were more likely to involve emotional and financial blackmail than physical violence. Would such threats and psychological pressure constitute 'coercion' in a legal system dominated by male assumptions about what consti-

tutes force?

With so much subjective interpretation involved in sexual and marital relationships it must be down to individuals themselves to define what is reasonable and unreasonable, when consent becomes coercion and when sex becomes rape. All the law can do is set the objective legal parameters within which reasonable and appropriate sexual behaviour can be evaluated by couples, and where necessary, the courts.

In the case of sex and rape within marriage it is obvious that the current restrictions on a wife's right to sexual determination should be abolished; 96% of the women surveyed thought that rape within marriage should be a crime and 84% thought that rape by a husband was equally as serious as rape by a stranger. At present by getting married a woman is giving herself up to be raped conventionally, orally and anally and can be subjected to other forms of sexual abuse including 'digital penetration' of objects or fists into her vagina. And none of these activities are regarded as rape within marriage; the last three categories of sexual abuse do not even constitute rape outside marriage.

The survey also included a question on rape in other relationships, by boyfriends, acquaintances and strangers. The proportion of women raped was quite staggering and may well be an underestimate. The total number of rape victims in the sample of 1007 women was 239 (24%). This means that one in four women have been raped at some time by some man. In the context of these figures it is unsurprising that national and local crime surveys conducted throughout the 1980s reveal that women have such a high fear of rape. Hitherto, crime surveys have recorded women's fear of rape and sexual assault (British Crime Survey 1982; 1985; 1988) but not their actual experiences of rape.

The most recent marital rape case was reported on the same day that the Home Office proffered guidelines to the police on toughening up their prosecution policy for violent husbands. Both are welcome developments not simply because of the legal precedents or guidelines set so much that taken together they indicate a change in public attitudes. Namely that henceforth, behaviour such as sexual and physical abuse of wives and cohabittees should not be tolerated as unavoidable, personal and private issues but as unacceptable crimes - as public

rather than private matters. But even if the laws on marital rape in England and Wales are clarified in the near future, the fundamental causes of rape and violence to women still need to be addressed.

If rape is to be prevented then we have to create a society which does not tolerate it. Policies to prevent rape have, therefore to deal with the cultural norms, attitudes and structural conditions which give rise to it. Education programmes at home and school should deal with the origins and prevention of male violence towards women. While our culture continues to define 'masculinity' in terms of competition, aggression, dominance and power and 'femininity' in terms of dependence, passivity and weakness then the pre-requisites for rape and male violence to women remain untouched. Male and female socialisation needs to be tackled. As one recent report put it there is a need *'For men to become - or to be taught to be - responsive to hearing 'no' and to believing that, that is what is meant and for women to be prepared - or to be similarly taught - that it is necessary to make 'no' absolutely clear and unequivocal when that is what is meant.'* (Smith 1989: 35).

Unfortunately, the magnitude of the task of re-education does not lend itself easily to policy recommendations. It should, nevertheless, be recognised that the root cause of marital rape lies in the broader context of unequal power relationships between men and women. Inequalities which are enshrined in the traditional family where the role of breadwinner gives the husband economic power and the role of home maker and mother, make women dependent. Marital rape is a problem which is exclusively focussed on wives but it must be examined in relation to wider issues of economic and sexual inequality which lie at the heart of our society. Progress can be made, if slowly. *Legal reform of the rape laws represents but a small step for man; it would be a giant step for womankind.*

Reference:

Smith L. 1989. *Domestic Violence*, Home Office Research Paper 107.

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Footnote: The findings of the Marital Rape Survey were published in November 1990.