Marital Rape As A Legal Circumstance

Although some individuals believe marital rape is not as severe of a crime, it should be classified and punished the same because it violates human rights, it creates a loophole for rapists to continue doing wrong with current regulations, and it usually indicates physical abuse as well.

Rape is a problem among our nation and creates a sense of fear in many young women. They fear walking alone, going out after dark, and being noticed by certain types of men. Women feel restricted in what they can do without jeopardizing their safety. It is heartbreaking to say that “one American is assaulted every 2.5 minutes” (“Definitions and Grant Provisions”). What is even more upsetting is how little anyone speaks of rape that happens behind closed doors in wedded households. Marital rape was not a legal circumstance in the law until the late twentieth century. Many laws prior to this time stated that women were not capable of being raped by their husbands, which allotted marriage to be an absolute defense to rape (Brown). Imagine the women who felt helpless as the law stood against their favor. Now, legal codes limit the severity of prosecution in a marital rape case despite the violation it provokes.

Marital rape, whether legal or not, is a violation of human rights. Our nation was founded on the idea that “all men are created equal,” thus providing unlimited security to all persons of this nation. The Declaration of Independence is the first defense in this argument that “gender violence is a fundamental human rights violation that states must take specific measures to combat” (Randall). It does not matter whether a marriage indicates a sexual relationship. When any of a person’s fundamental freedoms are violated, then it is the government’s full responsibility to step in and take control. A lack of prosecution limits victims’ access to equal benefit of the law (Randall). This defeats the principles the United States is based upon and leads to wonder what else we fall short on.

The current laws referencing marital rape allot a loophole for rapists to continue doing wrong and cheating the legal system. Just ten states currently have laws enabling rape survivors to apply for the revocation of the violator’s parental rights on the basis of strong and compelling proof that the child was conceived by rape (“Protection of Children and other Persons”). With these limitations, marital rape cases are difficult to prove and even harder to win parental rights. The lack of prosecution and the continuing of parental rights generates a loophole for perpetrators to continue getting away with wrong. This leads into the possibility of rapists using the threat of seeking custody or parental rights to coerce or otherwise threaten survivors into not prosecuting rape (“Protection of Children and other Persons”). The lack of penalization in rape cases and limited statutes preventing a rapist from assuming rights as a parent leads to the question: what is the justice system doing for rape survivors? We are allotting traumatic crimes to occur with no cost and providing lee-way in prosecution. Our system is slacking in doing its most important job: providing a sense of security to all.

Marital rape is a common phenomenon and is often typically an indicator of marital physical violence in the relationship as well. Where there is one, you can usually find the other. Around ten to fourteen percent of all married women and “at least 40 percent of battered wives” in the United States have been raped by their husbands (Campbell). Unfortunately, there tends to be

a correlation between physical abuse and sexual abuse in marriages. A study found that the prevalence of sexual harassment among battered women has been measured by several surveys, most of which report that their husbands have sexually abused at least half and as many as 70% of all battered women" (Mahoney). This aggression coming out in physical and sexual ways is quite frightening and can only make it more difficult on the victim. These patterns of abuse can psychologically affect women and convince them that these tendencies are normal. Not to mention that their perpetrator is someone they have to live with, as well as someone they loved enough to marry. This would make sense of why rape is one of the most under-prosecuted serious crimes ("Protection of Children and Other Persons"). However, with these results from simply a few studies it can only be guessed how many marital rape cases occur daily that are never reported or spoken of. These statistics make a point that marital rape is just as bad, if not worse than non-marital rape.

On the contrary, some individuals believe marital rape should not be prosecuted the same way as other rape cases because of the implication of a sexual relationship bound to marriage. Much of this idea is based off the historic notion that a "husband cannot be guilty of a 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" (Jackson). This concept has made women into sex objects and objectified their rights as a person. This has been seen throughout history as men took on a wife solely to have children and if they wanted sex, they would seek a mistress. This sexual repression affected many women and continues today, but in this new form. We do not see mistresses as often, but rather men demanding sexual acts from their partners and binding them to it by the constitution of their marriage.