

## Legal Rape in The Bahamas: A Scoping Review

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What does the continued existence of “marital rape exemptions” in ... criminal codes signify regarding marriage, rape, and law respectively? On marriage, it means just this... to be “married” essentially means that a wife is ... available to her husband for forced sex whenever and however imposed, regardless of the presence or absence of either her consent to, or desire for, either the sex itself. (West, 2016, p. 197).

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### Introduction

The Bahamas is reported to have a high per capita number of rapes and this has led to concerns about rape in general and other issues concerning gender-based violence (Virgil, 2016). The focus of this paper, while cognizant of these concerns, is more narrowly focused on the act of a husband forcing his wife to have sexual intercourse with him when she does not wish to do so.

Throughout this century, in The Bahamas, there has been a vigorous and consistent debate within society about the occurrence of rape within marriage (Benjamin & LeGrand, 2012). Legally, in The Bahamas rape cannot occur within marriage, even if a wife is subject to sexual intercourse in a manner which would be considered rape if she was an unmarried person. Section 3 of the *Sexual Offences Act of 1991* of The Bahamas defines rape as:

Rape is the act of any person not under fourteen years of age having sexual

intercourse with another person *who is not his spouse* —

- (a) without the consent of that other person;
- (b) without consent which has been extorted by threats or fear of bodily harm;
- (c) with consent obtained by personating the spouse of that other person; or with consent obtained by false and fraudulent representations as to the nature and quality of the act. (Section 3, italics added)

This definition contrasts with the perception within Bahamian society that a wife can be raped by her husband (Bethel & Fielding, 2020). Despite the legal gymnastics which define when the same action (sexual intercourse without mutual consent) is and is not rape, this paper will call the act of rape, as defined by the *Sexual Offences Act of 1991*, to define an action which we will term “marital rape” when it occurs between married persons.

Pre-independence in The Bahamas, Timothy McCartney wrote, “Bahamians seem to have a reputation of rampant sexuality” (1971, p. 133), but, conversely, Otterbein wrote that “rape, seduction with the assistance of alcohol, love magic are not part of Bahamian culture” (Otterbein, 1963, p. 67). These two statements from respected observers of traditional Bahamian sexual relationships show an apparent tension within society. Of course, sex is a key feature of human interaction, but one that takes place within a framework, bounded by respect for partners. Further the observation that young males are expected to engage in sexual intercourse with a woman to demonstrate that they are not a “sissy” (homosexual) adds another overlay of societal expectation on males to engage in sexual intercourse. Curry (2016) provides a recent background to violence against women in The Bahamas. It points to various gaps in the present protection of women, and highlights the need for data to assess if protection measures are effective. Bethel’s (2019) report on the criminalisation of marital rape in the Commonwealth Caribbean is helpful in placing The Bahamas’ increasingly isolated position on this matter among other CARICOM states.

In discussing rape, we cannot ignore that this act is one of many which is captured under the term, “intimate partner violence” which is defined by the World Health Organization as “behaviour by an intimate partner or ex-partner that causes physical, sexual or psychological harm including physical aggression, sexual coercion, psychological abuse and controlling behaviours” (World Health Organization, 2019). Therefore, information on intimate partner violence can be useful in shedding some light on marital rape, particular in a country where officially it does not exist.

In considering marital rape in The Bahamas, it is useful to be aware of how many women

are potentially at risk of rape without the protection of the law given to other women. From the 2010 census, it is clear that 48,725 women or 36% of the female population aged 15 and over are not protected by the law from rape by their husbands, Table 1.

Table 1 *Marital Status of Females Aged 15 and Over in The Bahamas, 2010*

Marital Status	N =
Not in a union	57,357
<b>Legally married</b>	<b>44,646</b>
Common-law union	10,087
Widowed, not in a union	8,206
Divorced, not in a union	6,454
<b>Married but not in a union</b>	<b>4,079</b>
Visiting partner	1,587
Legally separated, not in a union	1,494

Source: Bahamas Department of Statistics (2012)

Note: Categories in bold are not protected by the Sexual Offences Act from rape.

Where marital rape is not a crime, government statistics are likely unavailable, and such a gap needs to be filled from other sources and using proxy measures to assess the overall level of sexual violence. Rape data in some form are widely available for most countries, and so they allow us to assess how rape figures from The Bahamas relate to other countries. A comparison of the number of reported rapes per 100,000 of the population indicates that the figures for The Bahamas are not particularly out of line with those from elsewhere in the Caribbean and that its rate is decreasing (see Table 2). We need to remember that underreporting is a characteristic of the crime of rape, including The Bahamas (Bethel & Fielding, 2020), so these figures can be considered as lower bounds of the number of actual rapes

committed. As with all crime statistics, we need to be cautious in making comparisons between countries due to differences in reporting, but in terms of rape, The Bahamas does not appear to be so much different to its regional neighbours. However, it is evident,

that reported rapes have declined in The Bahamas, which is not the case elsewhere. In some countries in Table 1 marital rape is not a crime, so this highlights the caution required when examining Table 1.

Table 2 *Rapes per 100,000 of the Population of Selected Countries*

Country	Year																
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Grenada	20.9	19.8	26.9	27.6	39.7	21.0	31.3	16.4	30.8	45.8	45.4	42.5	46.3	46.8	105.1	164.2	153.3
Saint Kitts and Nevis					33.8	31.6	39.9					79.5	92.1	50.3	62.9	63.0	46.2
Suriname										58.1	48.0	58.1	58.2	26.8	16.0	41.8	
United States of America	31.8	31.5	30.6	29.7	28.9	27.5	26.8	26.9	35.6	36.6	38.8	40.5	41.1	43.3	42.8	37.6	41.8
Guyana					8.3	15.6	32.2	36.2	36.0		42.5	34.9	29.0	31.1	32.6	27.1	41.5
Saint Vincent and the Grenadines	77.6	44.9	54.1	32.6	49.2	25.6	51.5	18.5				34.9	32.2	41.8	57.2	22.0	
Antigua and Barbuda <sup>a</sup>											35.6	34.2	25.2	25.1	25.0	19.4	
Jamaica		26.3	26.4	31.5	26.0	26.6	31.1	34.6	31.1	25.9	22.3	18.7	17.5	18.0	20.1	19.3	16.3
Dominica										18.7	32.9	20.0	17.0	8.5	14.0	16.7	13.8
Saint Lucia <sup>a</sup>													27.1	25.3	15.7	14.5	12.8
Barbados	28.6	27.7	26.5	22.7	24.8	22.9	25.4	19.2	20.9	19.5	22.7	22.6	26.1	25.0	20.7	13.9	18.1
<b>Bahamas<sup>a</sup></b>	<b>25.0</b>	<b>20.4</b>	<b>37.7</b>	<b>32.5</b>	<b>29.6</b>	<b>20.9</b>	<b>28.3</b>	<b>25.1</b>		<b>18.5</b>	<b>19.4</b>	<b>54.3</b>	<b>13.0</b>	<b>13.7</b>	<b>10.6</b>	<b>12.3</b>	<b>11.8</b>
Dominican Republic								15.9	13.5	13.9	12.3	11.1	11.6	12.0	12.9	9.4	11.9
Belize	17.1	15.2			9.5	6.5	8.2	8.3	7.5	12.5	11.1	6.3	5.9	5.5	7.7	6.3	3.0
Trinidad and Tobago	24.4	18.8	22.9	16.9	17.6	15.4	14.1	20.0	14.7	13.6	12.3		8.4	7.5	7.4	6.1	
Overall (excluding Bahamas)	28.6	23.0	26.8	23.0	23.8	19.3	26.1	19.6	23.8	24.5	27.0	31.0	29.2	24.5	29.3	30.7	32.6

Source: United Nations Office on Drugs and Crime. (n.d.).

<sup>a</sup> Countries where marital rape is not criminalised

In The Bahamas, rape in general, not just marital rape, is the crime most feared by women (Bethel & Fielding, 2020). Although fear of crime and its occurrence, reported by the police, do not align (Bethel & Fielding, 2020), such fears shape people's reality and how they live their lives (Beatty et al., 2005). In the 1980s, female students at The College of The Bahamas were fearful of being raped within marriage, and this fear was a reason for not marrying (Fiore & Elsasser, 1982). The report of Fiore and Elsasser points to the conflicting views in society that can arise when others say that a husband cannot rape his wife (Bethel & Fielding, 2020).

An umbrella group of evangelical Christian leaders, The Bahamas Christian Council, has consistently opposed the notion of marital rape (Paul, 2009). In The Bahamas, as

elsewhere, the argument that a husband cannot rape his wife is advanced by fundamentalist Christian leaders. One such example is Paul (2022), which argues that marriage is sacred and seems to imply if rape occurs in marriage, it is sufficient that counselling should be offered through churches and the state. A perspective offered by a Baptist minister is rooted in a right which is legally and allegedly ordained by Christian belief, "God will not judge husbands or wives who take what is legally and spiritually theirs; i.e. their spouse, even if a little pressure (God forbid) at times, is used" (Cleare, 2018, para. 12). Such a view raises the question as to what "take" means and when a "little pressure" becomes forced sexual intercourse. This support for the marital rape exception seems to ignore the agency and consent of women, which is a

hallmark defining the difference between consensual sex and rape. Cleare also said that a wife is not to complain to the authorities when a husband “takes”; “if you [the wife] refuse to be in subjection to your husband and are accusing him of rape and turn him over to a legal system filled with unbelievers” (2018, para. 14). So, this message from a pastor is to deter victims of rape of even bringing the rape to the attention of the authorities who could protect them. A study from the USA Baptists, indicates that around a third (37%) of Baptists thought that divorce was a sin, even when the spouse is abused (Earls, 2015). This agrees with the teachings from other groups such as the Bethany Seventh-Day Adventist Church (2020). Such teachings are particularly relevant in The Bahamas as the Baptist group of churches has the single largest membership of any denomination (Bahamas Department of Statistics, 2012). These attitudes can be expected to prevent abused spouses from seeking help due to the peer pressure on them to stay in their relationship. Other Christian leaders have advised women to remain single if they do not wish to have sex with their partner when they are married (Jones, 2022). However, other Christian dominations refute the position that rape within marriage is not possible (or that a women cannot withhold consent to her husband when he wants to have sexual intercourse). The Archbishop of the Roman Catholics has said, “No person can be the possession of another. Human dignity does not allow this. The legacy of slavery and its abolition has surely taught us this lesson” (Scott, 2022). Likewise, the Anglican Archbishop stated, “It [rape] is not an act of love by any stretch of the imagination. Force is used to overpower a person who does not consent to the act” (Cartwright-Carroll, 2022 October). These conflicting views from various Christian dominations indicate that the texts and teachings which underpin Christianity appear

to be open to disputed interpretations. These reactions of religious groups in The Bahamas have been similarity expressed elsewhere in the region, for example Jamaica (Glum, 2017).

Similarly, Munnings (2020) noted differences between the attitudes of women working for gender equality. Although she identified three themes from her interviews: (a) determinants of gender-based violence sexual violence and gender discrimination; (b) barriers to addressing these forms of gender inequality; and (c) proposed solutions to eliminate gender inequality, the advocates did not always agree on the factors and influences at play which put women at risk of violence. Further, it should be noted, that not all women support criminalizing marital rape (Bethel & Fielding, 2020), and the case of a woman who was worried that her sons, when married, might be sent to prison for rape, is a public example of concern within the female population on criminalizing marital rape (Sweeting, 2023).

The messages arising from political leaders have also been inconsistent, for example Simon (2015) highlighted the gap between the rhetoric of politicians and their actions. Politicians, inside and outside of government have changed their public views on marital rape, and even when the political will appears to be moving towards a decision to outlaw marital, politicians, irrespective of their party, refer to the need for a “conversation” on the topic before a decision is considered (see, for example, Rolle, 2021). These mixed messages result in no action to change the law which may imply that the current Act on sexual abuse is acceptable to them.

Gender norms, such as “a man is the head of the household” and that a “woman’s place is in the home,” are typically learned at relatively early ages in the Bahamas (Nicolls et al., 2014) and the mothers are the most

important source of influence on their children on this topic (Fielding & Ballance, 2019). However, their messages are influenced by those conveyed by pastors (Fielding & Ballance, 2019). This mechanism allows for anyone with access to a pulpit to promote their opinion and to influence attitudes towards the treatment of females.

The Bahamian literature on rape is in agreement with that from elsewhere that it results from a power struggle between men and women (see, for example, Wiltshire, 2012), in which a man chooses to ignore the wishes of a woman and engage in sexual intercourse without consideration of her agency (Bethel & Fielding, 2020). In The Bahamas, this assertion of power has been linked to the treatment of slaves by their masters (and indeed mistresses), when slave masters would engage in sexual intercourse with their “property” at their will. Such attitudes have been discussed in a postcolonial view of marital rape in the Caribbean described by Elvy (2015).

Post-colonial theory has been used as a lens to view how Caribbean societies condone rape within marriage. Echoes of property rights, which deny the agency of women, can be detected in today’s society, for example in the quotation of the Rev Dr. Cleare above, “take what is legally and spiritually theirs” (2018, para. 12) and the quotation noted by Fielding et al. (2023), “She must give it up.” These attitudes are typically supported by selecting parts of the bible (often the letters written by Saint Paul) and promoted by some Christian communities, as described above. This mindset is supported by male-dominated groups and reflects the hyper-masculinity behaviour which, on one hand, society seems to condemn some sexual behaviours (such as sweet-hearting) but also seems to condone through inactivity in changing attitudes toward gender norms, such as “a man is the

head of the household” and that a “woman’s place is in the home” (Nicolls et al., 2014). Such attitudes have been publicly supported by members of parliament (Russell, 2018). The data from Fielding and Ballance (2022) show that it is typically older males, compared to other sex and age groups, who are least supportive of changing the law or marital rape, and least likely to agree that a husband can rape his wife. Both the government of The Bahamas (seven female MPs out of a total of 39 [“Making history”, 2021]) and clergy in the Bahamas (Fielding, 2019) are dominated by males, so it is understandable that masculine views of marital rape are heard.

One of the long-standing arguments against criminalizing marital rape is that women are spiteful and lie (Benjamin & LeGrand, 2012). This argument continues to be repeated (“Caution on marital rape”, 2023), despite fact that accusations of rape within a relationship are typically indicative of an already failed relationship (Stavrova et al., 2023). However, such generalized accusations of lying, cast a judgement without proof and add to the notion of victim blaming (see, for example, Ward, 2022), rather than protecting the victim from further abuse. Given the interest which surround a divorce case in which a divorce was granted so the so-called “cruel behaviour” of the husband, who treated his wife so that she felt that she had been raped (*AA v. BB*, 2021), suggests that allegations of rape might not be made without strong reason so as to avoid shame.

Rape myths are also perpetuated by leaders in society. For example, the leader of the Bahamas Constitution party has been quoted as contending that “only sex after violence, involving the beating and wounding of an individual in marriage, should be considered rape,” (Jones, 2022), and there have been claims of apparent victim blaming, as in a

case of a man having unprotected sex with a minor (Ward, 2022). A study of Bahamian school children found that rape myths are learnt at an early age (Nicolls et al., 2014), which suggests that they are learnt in the home or from school, as are gender roles (Fielding & Ballance, 2019). Aranha (2016) also demonstrated the lack of reporting of sexual abuse as well as myths surrounding sexual abuse In The Bahamas. The fact that many abusers are known to the victim makes it harder for victims to engage agencies which can either support them or even protect them. The physiological abuse associated with sexual abuse and rape, makes it harder for the victim to escape the relationship (Sackett & Saunders, 1999), an observation found in sexual abuse victims in The Bahamas (Fielding, et al., 2023). While various agencies in the Bahamas offer assistance to abused women (and men), church groups typically oppose divorce as a means of preventing further conflict between married persons (see, for example, Bethany Seventh-Day Adventist Church, 2020).

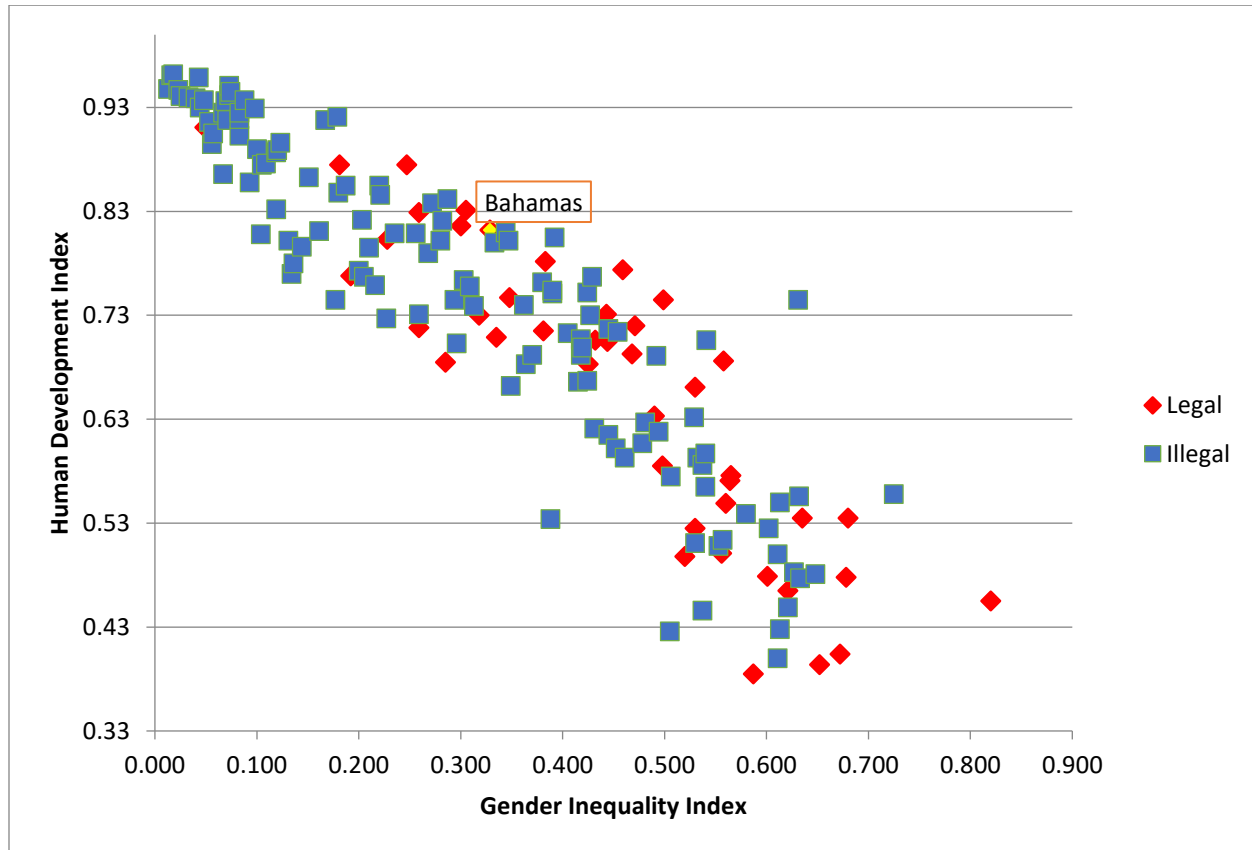
Bahamian society's interest in marital rape has been bound up with inequality issues between men and women. The two referenda on gender equality were held in The Bahamas in the first two decades of the 2000s. Both were defeated, in part, because of the politicising of the referenda, and concern that equal rights could be extended allow for "gay marriages" and somehow undermine the supremacy of the male in family relationships. These attitudes may be associated with longstanding attitudes towards of sexual initiation, which are different for males and females, and may lay the foundation of sweethearting in adulthood. The relationship between gender inequality and gender-based violence has noted by the strategic plan of the National Task Force on Gender Based Violence (2015), improved gender equality is a goal in the draft National Development Plan (2016).

The Bahamas has signed various agreements relating to gender equality, such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW, 1979; Ministry of Foreign Affairs, 2012) and it participates in discussions with organisations from the United Nations and the Commonwealth (The Commonwealth, 2023) which promote gender equality. The current report of CEDAW (2018) remains critical of The Bahamas on its stance towards legal rape, stating that the country should "Adopt, without delay, the amendments to the Sexual Offences Act expressly criminalizing marital rape; remove any temporal limitations to the right to file a complaint for marital rape" (Section 24(c)). However, despite these undertakings, The Bahamas remains one of about 30 countries that has not outlawed rape within marriage (Agrawal, 2020)

Of interest is that international data suggest that criminalisation of marital rape is associated with a country's national development, Figure 1. Why this may be, would be a useful topic of further consideration. The Bahamas stands out in the group of countries which has not criminalised marital rape in that it has a relatively low Gender Inequality Index (United Nations Development Programme, 2022) for a country of its level of human development (United Nations Development Programme, 2022). This suggests that there are complex relationships within a country which can contribute to it criminalising marital rape which are not clearly linked with other aspects of its society.

Figure 1 demonstrates that The Bahamas is somewhat unusual in that while it has a generally good Gender Inequality Index, most of the countries which have a similar or higher Human Development Index (United Nations Development Programme, 2022) have outlawed marital rape

Figure 1 Relationship Between Gender Inequality Index and National Development Index, Indexed by Countries in Which Marital Rape is Illegal and Legal



Note: The Bahamas is the yellow diamond.

Overall, countries which have outlawed marital rape are more peaceful than those which have not (mean Peace Index, illegal 1.96, legal 2.3,  $t = 4.1$ ,  $p < .001$ ). Figure 2 shows the relationship between the Peace Index (Institute for Economics & Peace, 2022) and the Human Development Index for countries which have and have not outlawed marital rape. It is apparent that countries which have not outlawed marital rape have lower Human Development Indices across the peace spectrum, so outlawing marital rape is an indicator of human development. (There is no Peace Index for The Bahamas, so it is not included in Figure 2).

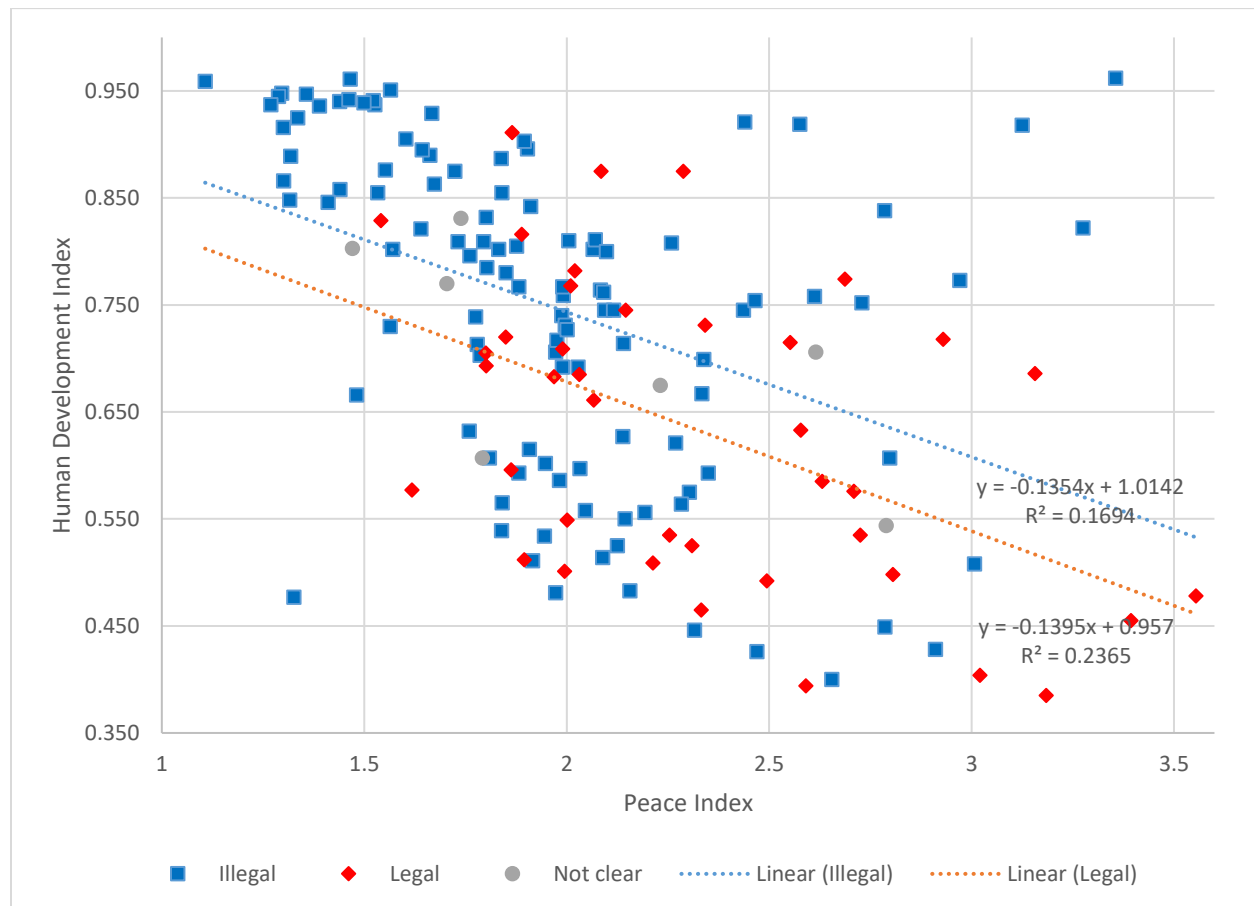
### Health Issues Associated with Marital Rape

Although sexual assault is recognized as a criminal offense that can be penalized by law in The Bahamas (Benjamin & LeGrand, 2012; Borumandnia et al., 2020), the issue of sexual violence within marriage remains a largely hidden and unacknowledged form of violence (Randall & Venkatesh, 2015). In her review of scholarly literature on marital rape, Bergen (2006) reminds us that women who experience sexual assault perpetrated by their spouses often endure multiple incidents, so their abuse becomes a part of their lives. There are still prevailing societal attitudes that consider marital rape as a private matter (The Official Nassau Guardian Ltd., 2017),

socially acceptable, or even within the rights of a husband (Agarwal et al., (2022). A prevailing social attitude that considers marital rape as a private matter or a husband's

right, contributes to the underreporting of this form of violence (Eves, 2021; Tasbiha, 2016).

Figure 2 *Relationship Between Peace Index and National Development Index, Indexed by Countries in Which Marital Rape is Illegal and Legal*



A consequence of keeping rape hidden is that of possible health concerns for victims. There are physical and emotional consequences that may accompany marital rape; women who are sexually assaulted by their husbands may fear being misjudged or misunderstood (Stokes & Brody, 2019) and as a result may suffer physical injuries, unwanted pregnancies, and sexually transmitted infections (Musso Ribeiro de Oliveira Souza et al., 2023). Factors contributing to increased risk of contracting sexually

transmitted Infections, include the use of physical force during sexual intercourse, lack of control over condom use, and infidelity of the spouse. Similarly, Meel & Kwizera (2011) found that women who experience marital rape are at an increased risk of experiencing mental health problems, including depression, anxiety, post-traumatic stress disorder, and substance abuse use. Such findings are in broad agreement with studies across cultures (e.g., Agarwal et al., 2022) and in The Bahamas, including a study



on mental health and sexual abuse in The Bahamas (Williams et al., 2021) and of sexual abuse and physiological abuse (Fielding et al., 2023).

Domestic violence and associated problems have been linked to suicide (Beleche, 2019). A report from 1850 in The Bahamas of a woman who tried to commit suicide due to domestic problems demonstrates the longstanding nature of this concern (Bahamianology, 2021). Although in The Bahamas, as elsewhere, women are less likely than men to die of suicide (see Figure 3), this may be because women are less likely to complete an attempted suicide than men (Freeman et al., 2017). The historical case of 1850 fits the data presented by Hutcheson

and Major (2016), that females are more likely than males to have failed to commit suicide. However, it should be noted that domestic violence, and in particular rape can increase the risk of women to attempt suicide, 5.3 times more likely, in one study (McFarlane, 2007). In The Bahamas, almost 60% of suicides between 2008 and 2012 were related to marital problems or relationship issues (Hutcheson & Major, 2016). This association was also reported in an earlier study in Barbados (Mahy & Griffith, 1980), so that the association is not unique to The Bahamas. While suicide rates in The Bahamas are lower than elsewhere, intimate partner conflict is noted as a pervasive cause in the Caribbean (Emmanuel & Campbell, 2012).

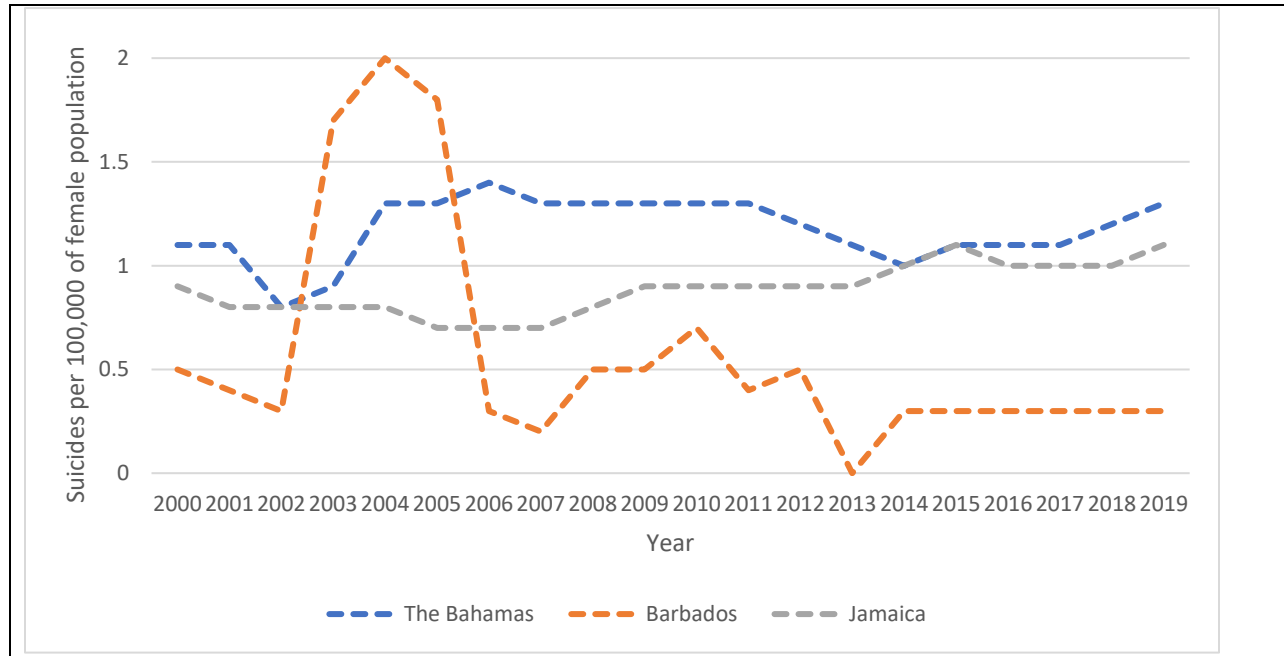
Figure 3 *Suicide Rates for Males and Females in The Bahamas*



Source: World Bank (2019)

Given the association between suicide and relationship problems, and the more widespread acceptance of domestic violence in The Bahamas than in other Caribbean states

(Sutton & Ruprah, 2017), it may not be surprising that that the suicide rate of females in The Bahamas is higher than in other Caribbean states, Figure 4.

Figure 4 *Suicide rates of females in The Bahamas, Barbados and Jamaica*

Source: World Bank (2019)

Some husbands also have other intimate partners and some husbands also have children with women outside their current marriage (Fielding et al., 2023). Therefore, some husbands have had unprotected sex outside of their marriage. Although The Bahamas has been successful in controlling HIV/AIDS, new cases continue to be found (Global AIDS Monitoring, 2018), and 59% of them were in the male population. Therefore, in the context of marital rape, the concern of the transmission of sexually transmitted diseases overlays the trauma and stress, and possible physical violence of the event. In the Global AIDS Monitoring report, there was no reference to the number of cases of AIDS which arose from an unfaithful partner infecting their spouse (or at least married persons having HIV/AIDS). However, with 2% of pregnant women being infected with HIV/AIDS (UNFPA, 2023), this gives a possible risk factor of catching HIV in relationships where there is infidelity (if we assume that at the start of the current relationship neither partner is infected). This

is important when we allow for the fact that both men and women, particularly men, have multiple partners (Ministry of Health & Wellness, 2023) and that they engage in unprotected sex, as evidenced by married men and women having children with partners who are not their current partner (Fielding et al., 2023). Adultery is not uncommon, and so when partners are unfaithful, the risk of abuse, including sexual abuse is elevated (Fielding et al., 2023), and so may enhance the risk of sexually transmitted diseases.

Furthermore, studies from outside The Bahamas remind us that victims of marital rape may face unwanted pregnancies (26% of rapes resulted in unwanted pregnancies in one study of intimate partner violence, McFarlane, 2007), which can lead to further health complications, pregnancy-related complications, and infant mortality (Withers et al., 2013; Wood et al., 2023). In one study about 50% of rape associated pregnancies ended in elective abortions, although it was

not clear how many of these pregnancies might have occurred within marriage (McFarlane, 2007). Women who experience marital rape are at an increased risk of unintended pregnancy. This is due to the husband controlling his wife's reproductive decision-making (Stokes & Brody, 2019). A review of contraception and abortion in the Caribbean indicated that little research was available about abortions in the region (Boersma & de Bruijn, 2011). In The Bahamas, abortion is legal only under specific conditions and rape is not one of them (Penal Code, Section 313). This demonstrates that the act of rape has the potential to inflict harm which can extend to that of an unborn child. A Bahamian newspaper report of the mother's boyfriend raping her daughter, and the daughter being given pills to precipitate an abortion is an example of the social and moral consequences of rape (Russell & Rolle, 2023).

Beyond the household, Johnson (2016) has provided cases studies that demonstrate how violence in the Bahamian home can be imported into the classroom, either through children or teachers. Children of mothers who were victims of intimate partner violence are at higher risk of themselves being victims themselves, which demonstrates the propagation of violence from one generation to the next (Bethel & Fielding, 2020). Therefore, the health risks associated with spousal rape ripple throughout society. The long-term health consequences of marital rape underscore the need for education, advocacy, and a shift of social attitudes towards recognizing this act as a serious crime (Benjamin & LeGrand, 2012; Lippus et al., 2020).

### **The legal landscape**

The Bahamian legal landscape is rooted in a decision by Chief Justice Matthew Hale who,

in the 1670s, put forward the idea that men had a right to enduring sexual relations with their spouse. This opinion is used, even in 21st century legal systems, to justify the marital rape exception (Rumsey, 1999). According to Anderson (1998), given that Hale cited no legal authority for his pronouncement, the consent theory was unchallenged in the British judicial system for more than 200 years as the reason for the recognition of exception to marital rape laws. In The Bahamas, the 1991 Sexual Offences Act states that rape cannot occur within marriage has its origins in the 1670s, a time when a wife was considered "feme-covert", i.e.: she lost her agency and became the property of her husband (Bethel, 2019).

Banerjee and Rao (2022) note that sexual violence and physical aggression have traditionally formed a grey legal area citing notions of "rights" and "consent" within a marriage. In The Bahamas, the legal framework as it relates narrowly to spousal rape is covered in the 1991 Sexual Offences Act as cited above. This makes it clear that the act of rape, as defined by law, is exempt from any offence between married spouses. Therefore, in The Bahamas, the "right" of the husband to have sex with his wife, trumps her consent. There are few limits placed on the access which a man can have to his wife's body for sexual intercourse, and these are described in Section 15 and relate to marriages which have already broken down as these limits cover a couple who are legally separated, have a separation agreement, a decree nisi of divorce or court order.

An extensive list of conventions and obligations with respect to The Bahamas and its international obligation is given by UNWomen Caribbean (2015). These conventions include those that address human rights and the protection of women from all forms of violence. They would view non-consensual intercourse within marriage

as an act of violence. As there is as yet no laws to criminalize rape within marriage in the Bahamas, so the country, has failed to honour its obligations under these conventions, which it voluntarily signed. Therefore, the government of The Bahamas has a moral obligation to harmonize its laws to reflect its promises to the international community. As more and more countries in the Caribbean region outlaw marital rape, The Bahamas' legislation on this matter looks increasingly archaic, which any law based upon social norms of the 1670s might do. This is seen in Bethel's 2019 review.

In The Bahamas, one of the reoccurring objections to criminalizing marital rape is that it would be difficult to prosecute (Russell, 2022 August). Difficulties to prosecute may be the result of many factors, one of which may be the lack of familiarity of the prosecution process for marital rape. This could include a lack of legal experience and expertise on the part of lawyers (Aequitas et al., 2017; Garvey et al., 2019). Those within the legal profession indicate that the role played by prosecutors should demonstrate the ability to implement specific legal strategies [from across existing laws] that can simultaneously enhance victim safety and effect offender accountability" (Titchener, 2019). *The Irish Times* reported that in the 26 years since making marital rape illegal in Ireland, only two convictions had been made (Holland, 2016), citing the closeness between the victim and the perpetrator as a major challenge in prosecutions. However, until any law is in place, discussions about how prosecutions would proceed are moot.

A Bahamian case of divorce between AA v. BB (2021) focused on the behaviour of a husband towards his wife which would probably have been considered rape if he had not been married. The judgment described the sexual intercourse as, "it was standard for

the Respondent [husband] to come home, ask for sex and, if she refused, lubricate, (forcefully penetrate her) have sex with her ... the Respondent did not care if she consented or said no" (2021, para. 7). The court accepted that the husband acted cruelly towards his wife, but he was not penalized for his cruelty towards her or accused of rape. Of note is the fact that although "cruelty" is sufficient grounds for divorce, the law does not appear to view rape as a cruel act or an act of duress, as rape cannot be grounds for divorce, as legally rape does not occur within marriage. This case also highlighted the fact that the husband who had been found guilty of cruel behaviour towards his wife, in a civil prosecution, was not prosecuted for any possible criminal offence of harm under the Penal Code (1927). Types of harm outlawed under the Penal Code includes duress, and this is defined as, "any force, harm, constraint or threat, used with intent to cause a person against his will to do or to abstain from doing any act" (1927, sect. 12). This might be deemed to conflict with the marital rape exception. It should be noted that marital rape has been criminalized through case law in the England (*R v. R*, 1991) and elsewhere. In *R v. R*, the court argued that:

The common law is, however, capable of evolving in the light of changing social, economic and cultural developments. Hale's proposition reflected the state of affairs in these respects at the time it was enunciated. Since then, the status of women, and particularly of married women, has changed ... one of the most important change is that marriage is, in the modern times, regarded as a partnership of equals and no longer one in which the wife must be the subservient chattel of the husband. Hales proposition involves that by a marriage, a wife gives her irrevocable consent to sexual intercourse with her husband under all circumstances and irrespective of the state of her health or

how she happens to be feeling at the time. In modern times any reasonable person must regard the concept as quite unacceptable (*R v. R*, 1991).

This may be a route that the Bahamian law and criminal justice system might need to follow if the government is unwilling to protect all segments of society. Even when rapes are reported to the police, the clearance rate is about 40%, compared to 61% for homicides (Sutton, 2016). This indicates that many rape cases do not result in a prosecution, which may deter women from making complaints to the police. Although officials encourage even married women who feel that they have been raped by their spouse to report the incident, this advice only applies to women who are legally separated and not yet divorced (Russell, 2022 October). This official advice again points to the limited help available to those who are victims of unwanted sexual intercourse within marriage, despite efforts by the police to be more sympathetic towards those who wish to report rape (Russell, 2023).

As was demonstrated, the legal landscape on the criminalization of marital rape is steeped in history, historical antecedents and legal precedents. The landscape has shifted, albeit very slowly, from the perspective of wives are as the property of their husbands, to one where wives are demanding to be seen as equal partners in a marriage and with ultimate control of their bodies. In the Bahamas, as it appears to be in many other jurisdictions, the “wheels” of the law and public opinion are slow to turn on the matter of criminalizing marital rape. One is encouraged by the fact that the “wheels” are still turning, as the fight continues for marital rape to be legislated as a criminal offence.

## **Marital rape in the news**

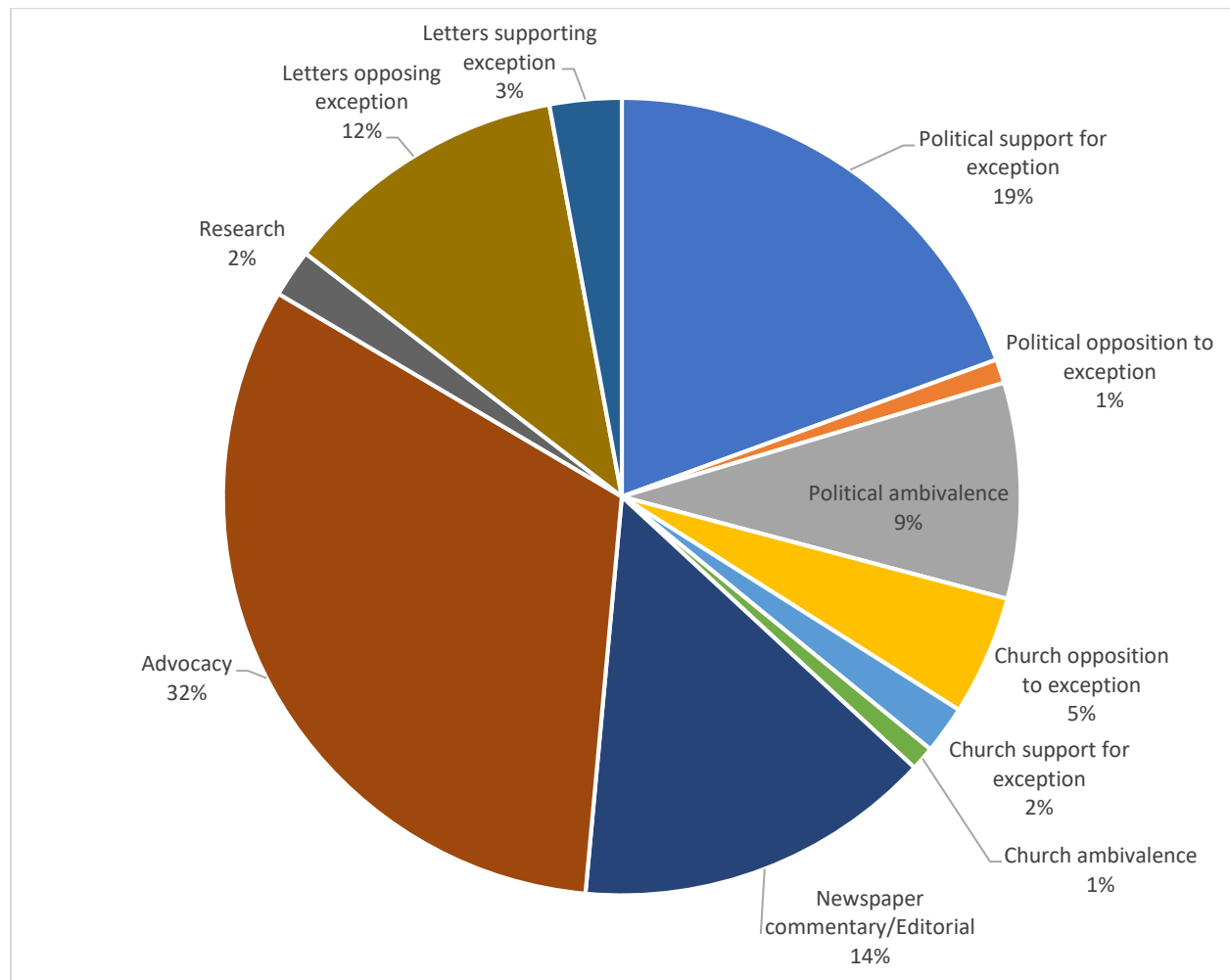
A review of 103 internet articles from a popular Bahamian newspaper, *the Tribune*, was undertaken using the key words “marital rape”, for a one-year period ending in July 2023. This review was undertaken to examine the nature of the articles presented to the public. As such, to some extent, it helps to assess the nature of the “conversation” on marital rape advocated by politicians. The single largest group of articles were associated with advocacy for gender equality and the criminalisation of marital rape (see Figure 5). This percentage reflects a regular column of Alicia Wallace who is an advocate for gender equality. Relatively few articles ( $n = 1$ ) associated with persons with a clear political association (current or past politicians) expressed support for the marital rape exception. However, the articles associated with ambivalence arose from influential politicians ( $n = 9$ ) or church leaders ( $n = 1$ ), whose views would be expected to be influential, at least within their affiliations. Overall, while church voices were in favour of the marital rape exception, this was not the case in the political arena. The newspaper’s editorials or in-depth commentary articles were always in opposition to the marital rape exception. If we assume that the letters published were representative of the letters sent to the editor, the writing public would appear to have been in overall support of removing the exception (12 in support and three against). Only a few articles on marital rape were based on academic research from The Bahamas, and few referred to it. While some advocacy articles used overseas research, few articles were grounded on facts relating to The Bahamas. Overall, most articles supported the removal of the marital rape exception. Consequently, these newspaper articles reflect the support for the removal of the exception as found by Bethel & Fielding (2020) and Williams et al. (2022).

### Estimates of Marital Rape

Bahamian society seems more tolerant of violence against women than elsewhere in the Caribbean. If a woman neglects the household chores or is unfaithful, there is greater approval or understanding that the man can hit his partner in The Bahamas than in some other Caribbean countries or the United States (Sutton & Ruprah 2017). This suggests that women in the Bahamas have an elevated risk of being victims of socially tolerated violence against them. The relative pervasiveness of rape/assault in The Bahamas is evident from the number of the

3,745 calls made to the emergency medical services concerning trauma. In 2008, 50.7% of these calls were for road traffic accidents, and assault/rape, 19.3%, accounted for the second most common reason for calling, and this is over three times larger than the 5.5% for gunshot wounds (Dahl-Regis, 2010). Sutton (2016) reminds us that the number of rape cases seen at Princess Margaret Hospital is about 1.5 times higher than the reports made to the police. Although the data do not disaggregate assault from rape or provide the sex of the victims, rape falls into a commonly reported class of trauma in The Bahamas.

Figure 5 *Distribution of 103 Articles Published in The Tribune, August 2022 to July 2023 Concerning the Marital Rape Exception*



Rape is associated with interpersonal violence between spouses, so estimates of interpersonal violence (Fielding et al., 2023), sexual violence etc. can be a necessary proxy indicator for the occurrence of marital rape. In addition, the use of physical violence by a husband on his wife is linked to marital rape, so estimates of physical violence are also a proxy indicator of rape within marriage (Fielding et al., 2023).

The estimates of the occurrence of domestic violence in The Bahamas arise from studies which use varying methodologies and with different target populations. The limitations of self-reported occurrence of rape have been noted by Bergen (2006). While this makes comparisons of the various studies difficult, they can be useful to see where the weight of evidence of the various estimates may lie. The estimates known to the authors are given in Table 3. The more extreme outcomes of physical violence on women were captured by Burnett-Garraway (2001). She reported that 23% of women presenting to Accident and Emergency at the public hospital in Nassau were married. She also reported that of the women who had been victims of acute abuse, 18.1% of them had been abused by their husbands. Overall, this suggests that marriage does not necessarily protect women from the harmful consequences of domestic violence.

The median values in Table 3 give us an overall impression of the extent of domestic violence, intimate personal violence (typically physical violence in these studies), sexual abuse (which includes non-consensual sex), and self-reported rape. In the United States 34% of women have reported having unwanted sexual intercourse, and this was typically because of marital “obligation” (Bergen, 2006, p. 1) and a study reported by the same author found 10-14% of married women in the United States had been raped. In Kenya, 13% of married women were raped

in the previous year by their husbands, (African Population and Health Research Center, 2010). Therefore, the figures from The Bahamas appear to be in line with those from other studies, albeit in different cultural settings. However, the Bahamian figures need to be interpreted with caution. From Bethel & Fielding (2020), we know that self-reported rape in college students is under reported, maybe by as much as 100% for lifetime experiences of rape, because respondents did not appreciate that having sexual intercourse when being legally unable to give consent constitutes rape. Therefore, the figures in the table can be viewed as lower bounds of the occurrence of sexual abuse/rape. However, it is not known what the comparable underreporting of rape may be within marriage. Given the peer pressure noted earlier, we might assume that it is higher in married women than in the population of single women.

In The Bahamas, the percentage of female homicides attributed to intimate partner violence or family (32.5% of all female homicides) is like Trinidad and Tobago (32.8%) and close to twice the percentage of Jamaica (18.8%; Sutton & Ruprah, 2017). This contrasts with relatively few male homicides being associated with intimate partner violence (Sutton & Ruprah, 2017). Hanna (2017) in his study on homicides in The Bahamas, showed that 6% of homicides were associated with “cases where disputes and arguments centered on intimate relationships, whether they entailed marriage partners, extra-marital affairs, or courtships between singles” (p. 26); one such homicide was reported in the BahamasLocal (“Man convicted”, 2011) and another in 2020 (Stewart, 2020). What is not clear is how many married women are killed by their husbands. Nonetheless, in common with other countries in the region, these reports demonstrate that intimate partner violence against women can result in death in The

Bahamas (United Nations Economic Commission for Latin America and the Caribbean, 2021). Collectively, these observations may suggest that females in The

Bahamas may be a higher risk than elsewhere in Caribbean of being sexually abused or even killed due to social norms.

Table 3 *Estimates of Interpersonal Violence in The Bahamas*

Domestic Violence	Intimate Partner Violence (females)	Sexual abuse	Source	Target population
40.3%		22.4%	Burnett-Garraway (2001)	Females attending A&E, hospital department
21.3%			Plumridge & Fielding (2008)	College students
33.1%			Unpublished data from Fielding (2010)	General population
39.8%	22.7% of mothers a victim		Fielding et al. (2011)	General population
21.1-32.3%		10.8-12.7%	Hutcheson et al. (2016)	General population
23.2%		5.3%	Brennen et al. (2010)	General population
27.2%		11.2%	Carroll et al. (2016)	General population
	20.5% of mothers hit by fathers		Fielding et al. (2015)	College students
	15.1% of mothers hit		Fielding (2020)	General population
47.7-52.3%	27.3 % of females hit	13.1% raped	Bethel & Fielding (2020)	College students
		14.9% raped	Fielding et al. (2021)	General population
	23.6%	5.7% (most recent experience)	Williams et al. (2022)	General population
		17.6%	Ministry of Health (2019)	General population
	15.3%	12.7%, 8.3% raped (married)	Fielding et al. (2023)	General population (current relationship)
32.7%	21.6%	12.2% abused, 13.1% raped	Median	

## Discussion

While the topic of rape is usually viewed through a negative lens, we need to be aware that from an evolutionary perspective there are advantages associated with rape (for example: Denno, 1999). This demonstrates that the importance of the lens through which the act is viewed. However, society appreciates the negative consequences that rape has on victims and so there is a need to support them and protect females from forced

sexual intercourse. Understanding that rape is a forced sexual act is important in helping survivors of this abuse (Maung, 2021). When women are reluctant to report their abuse to the police, the role of doctors to assist victims becomes important. Patterson (2017) identified the need to better prepare Bahamian physicians to support victims of interpersonal violence, as about 30% of them felt unable to adequately support these patients. However, as important as survivor support is, an equally important task is to



implement actions which will minimize the occurrence of marital rape.

In attempting to give estimates for the occurrence of sexual abuse and intimate partner violence this paper starts to provide an assessment of the scale and scope of the issue of legal rape and to demonstrate the level of suffering associated with this act. Such data start to put the arguments for and against the legalization of rape in certain contexts into a perspective which seems to have been lacking so far.

The topic of removing the marital rape exception in the *Sexual Offences Act (1991)* in The Bahamas continues to be discussed by women's advocacy groups, politicians and religious leaders each of whom have conflicting agendas. This stalemate has

occurred against a background of pain and suffering to women and society, the extent of which, while making some leaders feel "horrific" (Bowleg, 2022), has not apparently been sufficient to prompt action to remove the exception. Although politicians have the power to change the law, governments in The Bahamas appear to have taken the route described by McMahon-Howard et al. (2009), which is associated with delaying the removal of the spousal rape exception, this is despite the United Nations regarding marital rape as the major human rights issue in The Bahamas (Rolle, 2023). This may mean that alternative routes, such as case law may be required to remove the exception, as has occurred in England (Laird, 1992), need to be explored in order to offer all women, married or single, similar protection from rapists.

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