

## **Marital Rape: Victimization of Bangladeshi Women within Wedlock**

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“A woman with a voice is by definition a strong woman. But the search to find that voice can be remarkably difficult.” -**Melinda Gates**

### **Abstract**

*Regardless of the increased acknowledgment that the issue of marital rape has generated in the past few years, the literature in this area remains sparse. Forcing sexual intercourse on an unwilling marital partner, or marital rape, is not a crime in many societies around the world, because of a marital exemption rule that prohibits the prosecution of husbands who rape their wives. Concurrently, marital rape is one of the least studied phenomena in sexual violence research. This article presents a comprehensive review of the current state of the Marital Rape in Bangladesh as sexual violence in heterosexual marriage is not uncommon in this country. In Bangladesh, husbands were exempted from prosecution for raping their wives. Marital rape is seldom given the legitimacy or validity as other forms of sexual violence, but it can be degrading. What sets marital rape apart is that the victim has to live with her rapist. Marital rape is the focus of this article. This review highlights the seriousness of marital rape, in terms of prevalence and post trauma distress, as well as the limitations of extant research. The first part of the article is designed to cover the issues relating to basics of marital rape. The second segment briefly discusses reasons for which marital rape is not be criminalised. The third part of this article emphasises on the judicial precedents that are relevant to marital rape. The fourth part of the article intends to cover the issues relating to marital rape laws in Bangladesh. The fifth segment is dedicated to the evaluation of statistical data gathered from quantitative research on marital rape in Bangladesh. Doctrinal method of research is applied in this paper encapsulating qualitative method of research.*

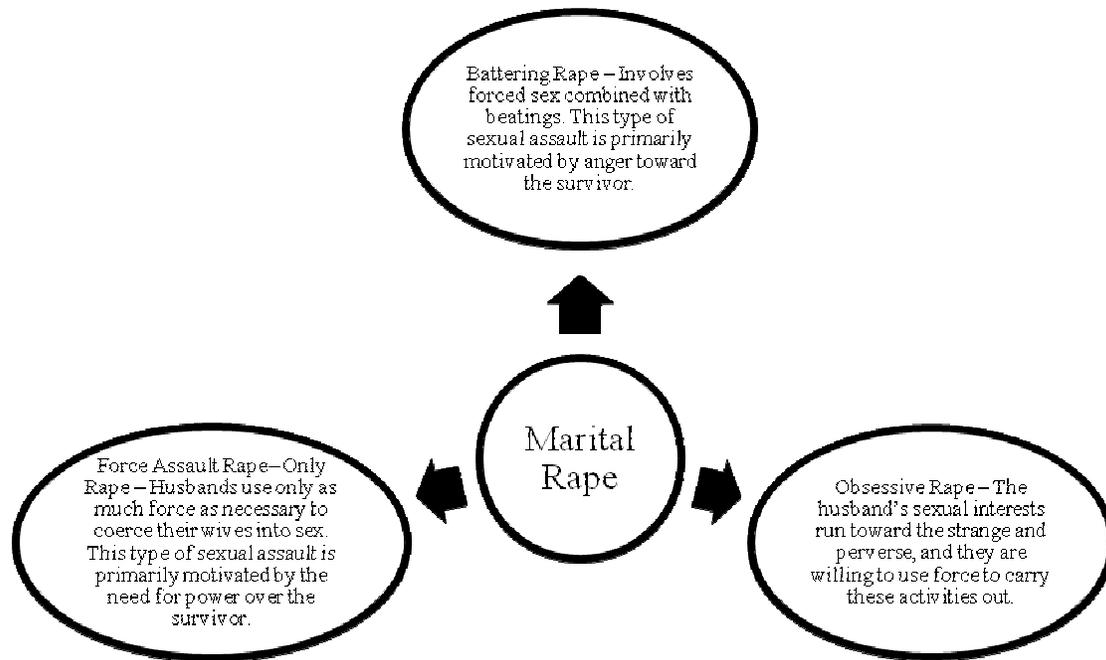
**Keywords:** Marital Rape, Intimate Partner Sexual Violence, Intimate Partner Sexual Assault, Legitimacy of Sexual Violence, Sexual Violence of Victims.

**Marital Rape – An Understanding:** Not too long ago, the term “marital rape” was considered an oxymoron and was considered to be legal in many parts of the world. It is difficult to treat marital rape as rape or a separate crime from other forms of rape within the ambit of many prevailing domestic law because , states continue to lend credence to the centuries-old idea that consent is more difficult to define within the boundaries of marriage. This particular notion dates back to 17th-century British common law perceptions, in which a woman’s unconditional sexual consent was considered to be part of the marriage contract.<sup>1</sup> Understandably, it is difficult to get a conviction in a husband-wife rape when they are living together, sleeping in the same bed, and the wife is in a nightgown and so forth. There is no injury; there is no separation, or anything. Marital rape means any unwanted sexual acts by a husband that is committed without the other

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wife's consent. Such illegal sexual activities are done by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another or when a person is unable or decline to consent. The sexual acts include intercourse, anal or oral sex, forced sexual behaviour with other individuals, and other sexual activities that are considered by the victim as degrading, humiliating, painful, and unwanted. It is also known as spousal rape. Spousal rape can take place where wife is at the time unconscious of the nature of the act and this is known to the husband, or was not aware. Although the vast majority of marital rape cases involve a female victim and male offender, this would technically apply to a spouse of any gender. On July 27, 2015, The Daily Beast reported that Ivana Trump, former wife of presidential candidate Donald, had accused her ex-husband of rape in a deposition during their divorce proceedings.<sup>ii</sup> Earlier this year, a British woman named Sarah Tetley revealed that she had been raped over 300 times in her sleep by her own husband who daintily recorded his sexual activities for his own consumption. Unknown to Sarah Tetley as she slumbered each night, her husband Charles Tetley had been subjecting her to marital rape and recording at least 300 sick encounters. Charles Tetley, the husband pleaded guilty in Aug. 2014 to 27 sexual charges including rape, assault by penetration, sexual assault and making indecent images of children to acts committed between January 2011 and October 2013. He was sentenced to 12 years in prison but if Tetley had lived in Bangladesh, that sentence may have been considerably more difficult to obtain.<sup>iii</sup> It is pertinent to note that marital rape is still an understudied topic but it is estimated from previously gathered data that anywhere between 10 to 34 percent of women have been raped or sexually assaulted by a spouse or intimate partner. According to the Encyclopedia of Victimology and Crime Prevention, nearly 70 percent of rapes go unreported—a percentage that is likely much higher for marital rapes alone. Diana Russell's study of over 900 married women in 1978 revealed that 14 percent had been sexually assaulted in some way by their husbands.<sup>iv</sup> A study conducted in 2008 and published in the Journal of Interpersonal Violence asked 85 undergraduate students and 44 alumni from a small U.S. liberal arts college about what constitutes rape. Respondents were given several short narratives that described sexual assaults — the narratives differed from each other only in their description of the victim-perpetrator relationship (e.g. "her husband" was replaced with "her neighbor"). The study found respondents were more likely to say "it wasn't really rape" and "he didn't mean to" in cases of marital rape rather than acquaintance rape. The authors cite four other studies that found a difference in attitudes toward rape depending on the relationship between the victim and the perpetrator.<sup>v</sup> Rape by an intimate partner is prevalent in the United States. In 2010, the Centers for Disease Control and Prevention interviewed 16,507 U.S. adults in the National Intimate Partner and Sexual Violence Survey and found that nearly 1 in 10 women (9.4 percent) had been raped by an intimate partner in her lifetime. It also found that 16.9 percent of women and 8.0 percent of men had experienced sexual violence other than rape by an intimate partner at some point in their lives. Marital rape is of three types- (1) Battering Rape; (2) Force Assault rape; and (3) Obsessive Rape<sup>vi</sup>.



As mentioned before, marital rape is one of the under-reported violent crimes because it is socially tolerated. Marital rape is just as violent, just as degrading, and often times, more traumatic than rape by a stranger. Sometimes it is perpetrated with knives, at gunpoint, repeatedly, brutally, and in front of others. Most often it is the final violent act in a series of physical abuses. Marital rape happens frequently, causing health problems, pain and distress to abused women. Marital rape prevents individuals from being able to take control of their own sexual and reproductive health. Children in households where marital rape occurs also often suffer from the psychological effects of witnessing violence, and because it can undermine the ability of their mothers to care for them. The right to be free from coercion and violence in relation to sex is a human right that is defined in several Regional and International Laws. These laws include the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Protocol on the Rights of Women in Africa. The right of a woman to consent to sexual intercourse within a marriage, culminated in the December 1993 Declaration on the Elimination of Violence Against Women by the United Nations High Commissioner For Human Rights which states, “Increasing criminalisation of spousal rape is part of a worldwide reclassification of sexual crimes “from offenses against morality, the family, good customs, honour, or chastity... to offenses against liberty, self-determination, or physical integrity.”<sup>vii</sup> Further the concept of marital rape was recognised in 1995 Fourth World Conference on Women, Beijing and Beijing +5: Special Session on “Women: 2000: Gender Equality, Development and Peace for the Twenty-First Century”. In the Declaration on the Elimination of Violence against Women, it is stated that violence against women shall be understood to

encompass, but not be limited to, the following:(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.<sup>viii</sup>

Marital rape has often been addressed in the problematic framework of morality, public decency and honour, and as a crime against the family or society, rather than a violation of an individual's bodily integrity. While the concept of rape within intimate relationships remains highly problematic in many countries, an increasing number of countries are removing exemptions for rape/sexual assault within an intimate relationship from their penal codes and/or enacting specific provisions to criminalize it. In 2006, it was estimated that marital rape could be prosecuted in at least 104 countries (in four of these countries, marital rape could be prosecuted only when the spouses are judicially separated), and since 2006 several other countries have outlawed spousal rape.<sup>ix</sup> Lesotho, Namibia, South Africa and Swaziland have all criminalized marital rape. In 2002, the Supreme Court of Nepal in the case of Forum for Women, Law and Development (FWLD) vs. His Majesty's Government/Nepal (HMG/N) found the marital rape exemption to be unconstitutional and contrary to the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women. In 2003, the introduction of the Criminal Code (Sexual Offences and Crimes against Children) Act 2002 in Papua New Guinea abolished marital immunity in relation to rape. But not all citizens of all the countries are fortunate like citizens of Lesotho, Namibia, South Africa and Swaziland. Many countries failed to criminalize marital rape. For example, Section 375 of the Indian Penal Code, 1860, (post 2013-Criminal Law Amendment), in dealing with sexual assault, in a very narrow purview lays down that, an offence of rape within marital bonds is said to be committed only if the wife is less than 12 years of age, but if she is between 12 to 16 years, an offence is committed, however, less serious, attracting milder punishment. Once, the age crosses 16, there is no legal protection accorded to the wife, in direct contravention of human rights regulations.

### **Why marital rape is not be criminalised?**

*“When you have been intimately violated by a person who is supposed to love and protect you, it can destroy your capacity for intimacy with anyone else. Moreover, many wife victims are trapped in a reign of terror and experience repeated sexual assaults over a period of years. When you are raped by a stranger you have to live with a frightening memory. When you are raped by your husband, you have to live with your rapist.” Dr. David Finkelhor<sup>x</sup>*

In olden times, the law of rape had as its pre-occupation, the protection of virgins from rape, forced marriage and abduction. Indeed the position of things was such that the complaint of rape by non-virgins was often ignored.<sup>xi</sup> It was observed in *People V Alberta* as “The purpose behind

early rape laws was to protect the chastity of women and thus their proprietary value to their fathers and husbands.”<sup>xii</sup> Historically, rape and sexual assault were not criminalized when committed within the context of an intimate relationship. Sir Matthew Hale (1609- 1676), the former chief justice of England presumed that once a woman is married, the consent to sexual intercourse is automatically assumed in favour of the husband, which she cannot revoke. Lord Hale wrote that “[T]he 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”<sup>xiii</sup> In substance, the contract of marriage is a licence to the husband to control her sexual autonomy in return for his “protection”. This “contractual theory” ties in with the second justification for the exemption - “the property theory”. As per this theory, a woman “belongs” to her father before marriage, and is her husband’s property thereafter. Since the owner of the property is empowered to use his property according to his own needs, the question of a husband raping his wife does not arise. The final justification of marital rape exemption is the “unification theory”. According to this theory, the wife forfeits her legal existence on getting married; consequently, her legal and individual identity merges with that of her husband’s. Since the wife is legally non-existent, it is not legally possible for a man to rape his wife.<sup>xiv</sup>

Lord Hale’s notion of an irrevocable implied consent by a married woman to sexual intercourse has been cited most frequently in support of the marital exemption<sup>xv</sup>. Any argument based on a supposed consent, however, is untenable. Rape is not simply a sexual act to which one party does not consent. Rather, it is a degrading, violent act which violates the bodily integrity of the victim and frequently causes severe, long-lasting physical and psychic harm. To ever imply consent to such an act is irrational and absurd. Other than in the context of rape statutes, marriage has never been viewed as giving a husband the right to coerced intercourse on demand. Certainly, then, a marriage license should not be viewed as a license for a husband to forcibly rape his wife with impunity. A married woman has the same right to control her own body as does an unmarried woman. If a husband feels “aggrieved” by his wife’s refusal to engage in sexual intercourse, he should seek relief in the courts governing domestic relations, not in “violent or forceful self-help.” The other traditional justifications for the marital exemption were the common-law doctrines that a woman was the property of her husband and that the legal existence of the woman was “incorporated and consolidated into that of the husband”<sup>xvi</sup>. Both these doctrines, of course, have long been rejected by many jurist and courts. This is why in *R v R* [1991], Lord Keith stated that “It may be taken that the proposition was generally regarded as an accurate statement of the common law of England. 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 out of all recognition in various ways which are very familiar and upon which it is unnecessary to go into detail. Apart from property matters and the availability of matrimonial remedies, one of the most important changes is that marriage is in modern times regarded as a partnership of equals and no longer one in which the wife must be the subservient chattel of the husband. Hale’s proposition involves that by 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 that conception as quite unacceptable.”<sup>xvii</sup>

### **Judicial Precedents and Marital Rape**

Parliaments of many countries have dealt the marital rape issue by enacting statutes which provide immunity to husbands in a variety of ways. In various countries statutes define ‘rape’ as sexual intercourse with a ‘female’ not with the ‘spouse of the actor’, or sexual intercourse without consent by a man with a female not his wife. Under the umbrella of legitimacy, in many states, a husband can rape his wife. In many countries statutes contain partial exemptions. For example, the exemption applies unless the parties are living apart and one spouse has filed a petition for separation, divorce, annulment, or separate maintenance. In other states the exemption applies unless the parties are separated under a court order require the parties to be living apart or one spouse to have begun legal proceedings at the time of the rape. But Judiciary of many states took various attempt to rectify the inherent faults prevailed in statutory regimes regarding the stated issues based on Hale’s proposition. A robust initiative was adopted through judicial interpretation in mid nineties. In this segment I am trying to focus on the judicial improvement to enlighten the readers about how the legal regime changed in this century regarding the aforesaid issues.

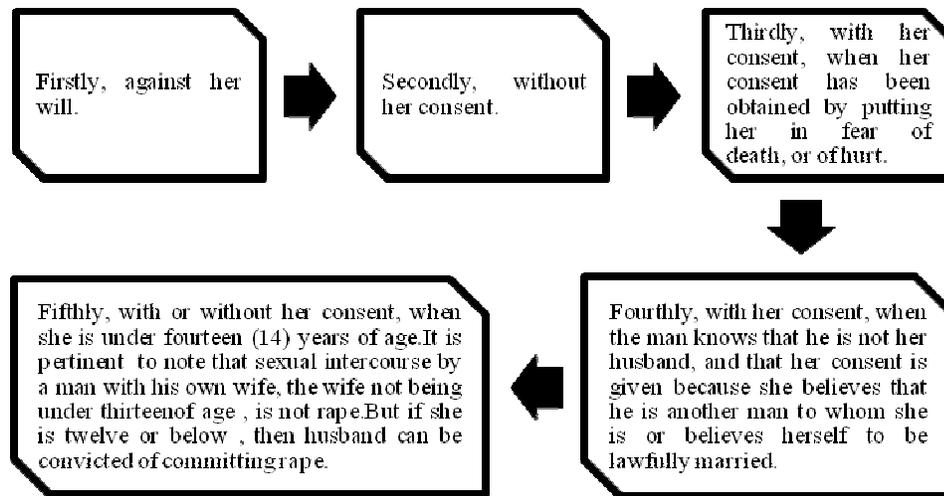
In *R v Clarence* (1861), the defendant had sexual intercourse with his wife knowing that he was infected with gonorrhoea. He passed the infection to his wife and was convicted under s.47 and s.20 of the Offences against the Person Act 1861 and appealed. It was held that the defendant was innocent and subsequently his conviction was quashed as the wife had consented to sexual intercourse and therefore no technical assault or battery occurred. The court held that these were necessary ingredients of both Actual Bodily Harm and Grievous Bodily Harm. It was irrelevant that the wife was unaware of the infection or whether she would have removed consent had she known since at the time a wife was deemed to consent to sexual intercourse with her husband. In *R v Clarence* (1861), Will LJ said that “if sex was an assault for a man it is rape but in marriage it is non-existent and there is no authority to prove otherwise. The man innocent of rape as women gives implied consent through marriage. One could say the pathway originated from this very point to be allowed to develop.”<sup>xviii</sup> He further stated, “If intercourse under the circumstances now in question constitute an assault on the part of the man, it must constitute rape, unless, indeed, as between married persons rape is impossible, a proposition to which I certainly am not prepared to assent, and for which there seems to me to be no sufficient authority... I cannot understand why, as a general rule, if intercourse be an assault, it should not be rape.” Clarence has achieved notoriety as support for the proposition that a married woman is deemed to consent to sexual intercourse with her husband. A husband could not be indicted for rape of his wife. This “irrevocable privilege”, however, is the source of the artificial notion that sexual intercourse forced on an unwilling wife by her husband was nevertheless bound in law to be treated as if it were consensual sexual intercourse permeated.<sup>xix</sup> Although this was not a case where rape was alleged, this was the first case which included an acceptance of the rule that a married woman gives implied consent to the act of sexual intercourse.

The first attempted prosecution of a husband for the rape of his wife was *R v Clarke*.<sup>xx</sup> Rather than try to argue directly against Hale's logic, the court held that consent in this instance had been revoked by an order of the court for non-cohabitation.<sup>xxi</sup> In *R v Clarke*, a man was charged with raping his wife where a separation was ordered but still married. This was because the husband was cruel to his wife. The separation order contained a clause that the wife was no longer bound to cohabit with the husband and she was not cohabiting at the time of the offence. When raped she was living elsewhere. The defence counsel applied to the court to quash the charge of rape on the basis that it was not actually an offence known to the law. This argument reinstates Hale's doctrine. Bryn J confirmed a man cannot rape his wife as sex in marriage contract. But this privilege was revoked by the Courts order so husband had a little defence. This case was slightly deviated from Hales proposition. Cases like *R v Miller*<sup>xxii</sup> and *R v O'Brien* restated the Hale proposition, furthermore, diligently emphasized on the fact that a husband will be liable for assault if he uses force or violence during sexual intercourse with his wife. In case of *R v Miller* (1954), the defendant's wife had left him in 1952. The following year she petitioned for divorce. Before the hearing for the petition the defendant had sexual intercourse with her against her will. He had thrown her to the ground on three occasions and she was in a hysterical and nervous condition as a result of his actions. He was charged with rape and assault occasioning actual bodily harm contrary to s.47 OAPA 1861. The defendant relied on the marital consent exception to rape and that nervous shock does not amount to a bodily injury. The court held that the consent to sex was still validated but no aggression allowed or guilty of an offence. In *R v Miller* (1954), Lynskey J ruled that Hale's proposition was correct and that the husband had no case to answer on a charge of rape, although the wife had before the act of intercourse presented a petition for divorce, which had not reached the stage of a decree nisi. This was followed by *R v O'Brien* (1974), in which Park J ruled that a decree nisi effectively terminated a marriage and revoked the consent to marital intercourse given by a wife at the time of marriage.<sup>xxiii</sup> In *R v Obrien*, wife obtained a court order to get divorce. After this the husband raped her. It was held that the decree nisi terminated the consent. Therefore, the husband was guilty of rape. In *R v Steele* (1976)<sup>xxiv</sup>, it was held that where a husband and wife are living apart and the husband has made an undertaking to the Court not to molest the wife, which is in effect equivalent to the granting of an injunction and eliminates the wife's implied consent to sexual intercourse. It is significant to note that in the case *Lane L.J* cited Hale's rationale and upheld the marital exemption without question. In *R v Roberts* [1986], the Court of Appeal held that consent had on the facts been terminated where there was a formal deed of separation, even though this lacked both a non-cohabitation clause and a non-molestation clause. The Court said when dismissing the appeal that the law was conveniently summarised in *Steele*, the question for the court was had the parties by agreement between themselves, or the court by order or something equivalent to an order made clear that the wife's consent to intercourse no longer existed. The case suggested that a simple agreement between husband and wife revoked the consent to sexual intercourse.<sup>xxv</sup> In *R v C (Rape: Marital Exemption)* (1991), Simon Brown J, concentrating on the common law, took the radical step of holding that Hale's proposition was no longer the law. As he stated: "Were it not for the deeply unsatisfactory consequences of reaching any other conclusion upon the point, I would shrink, if sadly, from adopting this radical view of the true position in law. But adopt it I do. Logically, I regard it as the only defensible stance, certainly now as the law has developed and arrived in the

late 20th century. In my judgment, the position in law today is, as already declared in Scotland, that there is no marital exemption to the law of rape.” In *R v R* (1992), at first instance, Owen J clearly expressed his reluctant acquiescence with Hale’s general pronouncement, and the need to extend the exceptions to the doctrine of implied consent as follows: “I accept that it is not for me to make the law. However, it is for me to state the common law as I believe it to be. If that requires me to indicate a set of circumstances which have not so far been considered as sufficient to negative consent as in fact so doing, then I must do so. I cannot believe that it is a part of the common law of this country that where there has been withdrawal of either party from cohabitation, accompanied by a clear indication that consent to sexual intercourse has been terminated, that that does not amount to a revocation of that implicit consent. In those circumstances, it seems to me that there is ample here, both on the second exception and the third exception, which would enable the prosecution to prove a charge of rape or attempted rape against this husband.”<sup>xxvi</sup> In *Regina v R* (1991) the husband had been charged with rape upon his wife and actual bodily harm (ABH). The wife had left to live with her parents but there was no formal separation, although the wife had consulted solicitors. The prosecution claimed that the husband had broken into her parents’ home and raped her. The defence argued that there was no such offence, because of the marriage exemption. The case was appealed until it reached the House of Lords. The judgment was given by Lord Keith of Kinkel who said that the contortions being performed in the lower courts in order to evade the marital rights exemption demonstrated how absurd the rule was. He said that, the marital rights exemption was a “common law fiction” which had never been a true rule of English law. Kinkel concluded that “the fiction of implied consent has no useful purpose to serve today in the law of rape. Such a radical decision could not but go to the House of Lords, which unanimously followed the decision and reasoning of the Court of Appeal. Their Lordships agreed that Hale’s pronouncement never was law; it was always a fiction that had infiltrated the common law. What the present case did was merely to put the common law back on its correct tracks. As for the interpretation of the Sexual Offences (Amendment) Act 1976, the appearance of ‘unlawful’ in s 1(1) was mere surplusage. Subsequently, the word ‘unlawful’ was removed from the definition of rape under the Criminal Justice and Public Order Act 1994. Thus was the fiction of marital consent removed forever: reality remains a more intractable matter.”<sup>xxvii</sup>

### **Marital Rape within the Periphery of Laws of Bangladesh**

Marriage does not thrive on sex .A marriage is a bond of trust and that of affection and not barter. It is not an exchange of promises to provide sex. A husband exercising sexual superiority, by getting it on demand and through any means possible, is not part of the institution. Surprisingly, this is not, as yet, in any law book in Bangladesh. According to section 375 of the Bangladeshi penal code 1860 (Act XLV of 1860) - A man is said to commit ‘rape’ who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:



Section 375, the provision of rape in Bangladeshi penal code 1860 (Act XLV of 1860), has echoing very archaic sentiments, mentioned as its exception clause- “Sexual intercourse by man with his own wife, the wife not being under 13 years of age, is not rape.” Section 376 of BPC provides punishment for rape. According to the section, the rapist should be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, unless the woman raped is his own wife and is not under twelve years of age, in which case he shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Punishment for rape has also been described in The Prevention of Oppression against Women and Children Special Act 2003 (Nari O Shishu Nirjatan Daman Bishesh Ain 2003). According to section 9 of this Act -

- i. Whoever commits rape with a woman or a child shall be punished with rigorous imprisonment for life and with fine.<sup>xxviii</sup>
- ii. If in consequence of rape or any act by him after rape, the woman or the child so raped, died later, the man shall be punished with death or with transportation for life and also with fine not exceeding one lac taka.
- iii. If more than one man rape a woman or a child and that woman or child dies or is injured in consequences of that rape, each of the gang shall be punished with death or rigorous imprisonment for life and also with fine not exceeding one lac taka.
- iv. Whoever attempts on a woman or a child to cause death or hurt after rape, he shall be punished with rigorous imprisonment for life and also with fine. To commit rape, he shall be punished with imprisonment for either description, which may extend to ten years but not less than five years rigorous imprisonment and also with fine.
- v. If a woman is raped in the police custody, each and every person, under whose custody the rape was committed and they all were directly responsible for safety of that woman, shall be punished for failure to provide safety, unless otherwise proved, with imprisonment for either description which may extend to ten years but not less than five years of rigorous imprisonment and also with fine.

These foregoing sections in dealing with rape, in awfully slender purview stipulates that, an offence of rape within wed-lock stands only if the wife be less than 13 years of age, if she be between 12 to less than 12 years, an offence is committed, however, less serious, attracting

milder punishment. Once, the age crosses 12, there is no legal safeguard offered to the wife, in direct contravention of human rights regulations. It is still unclear why the same law provides for the legal age of consent for marriage to be 21 while protecting from sexual abuse, only those up to the age of 12? Beyond the age of 12 or 14, there is no remedy the woman has. Therefore it is not an exaggeration to say that still in our country, rape within marriages is not recognized. No married woman can seek “legal assistance if she is raped by her husband. These laws discriminate between married and unmarried women. A married woman is obliged to have sex, even if she is not willing, with her husband.”<sup>xxix</sup> Further, Section 122 of the Evidence Act 1872 prevents communication during marriage from being disclosed in court except when one married partner is being persecuted for an offence against the other. Since, marital rape is not an offence, the evidence is inadmissible, although relevant, unless it is a prosecution for battery, or some related physical or mental abuse under the provision of cruelty. Setting out to prove the offence of marital rape in court, combining the provisions of the Nari O Shishu Nirjatan Daman Bishesh Ain 2003 and BPC will be a nearly impossible task. Further, another key barrier acknowledged in Section 155(4) of the Evidence Act 1872 regarding the subject matter. Section 155(4) is relating to character evidence in rape cases. This provision states that “when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.” The introduction of character evidence, which attempts to show that a person was “immoral”, is humiliating and degrading for the survivor. It also actively deters survivors from reporting rape. It results in a legal and moral anomaly where a woman who is alleging a rights violation is compelled to prove her “good character” in order to secure justice. This burden placed upon a rape complainant discriminates against her in two ways: i) by subjecting women to a double standard based on their gender and ii) such a burden is not placed upon a complainant in any criminal offence other than rape.

**Marital Rape in Bangladesh based on statistics**

According to a recent nationwide survey conducted by the government, nearly nine out of 10

husbands abuse their wives in Bangladesh.

Most of the women “who face domestic abuse see the violence culminating into marital rape. The survey reveals that around one-third of the married women have been raped by their husbands.”<sup>xxx</sup> In 2013 the

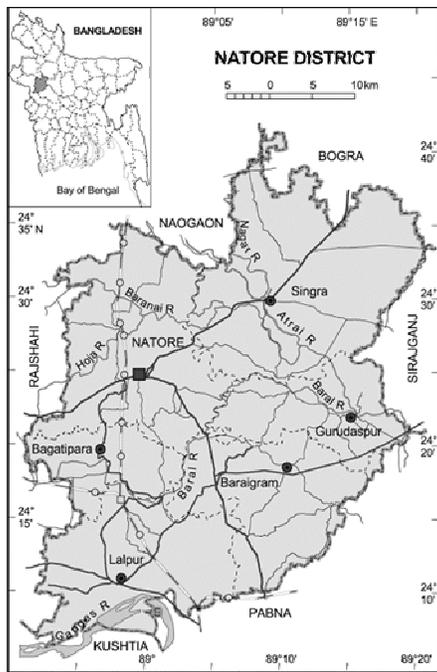
**Men reporting sexual violence against an intimate partner**

	Physically forced wife / girlfriend to have sex against her will (%)	Had sex with wife/girlfriend when he knew she didn't want to because he believed she should agree because she was wife / girlfriend (%)	Sample
Bangladesh (rural)	15.1	n/a	030
Bangladesh (urban)	10.4	n/a	742
Cambodia	9.6	16.5	1,474
China (urban/rural)	12.4	15.1	970
Indonesia (rural)	8.4	15.2	769
Indonesia (urban)	12.5	20	820
Indonesia Papua	29.5	37.2	858
PNG Bougainville	46.2	47.1	741
Sri Lanka	12.7	10.5	1,175

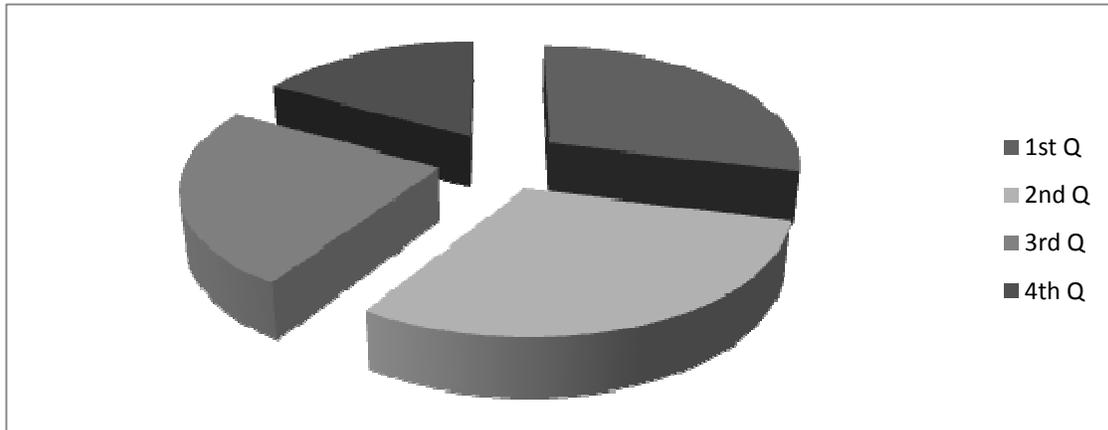
Source: UN report, Why do some men use violence against women statistical appendices

researchers from the UN Cross-sectional Study on Men and Violence surveyed about 10,000 men in a handful of urban and rural areas in six countries in Asia and the Pacific – half were from Bangladesh and Indonesia, the others from China, Cambodia, Indonesia, Papua New Guinea and Sri Lanka. This study identified that 15.1% of rural Bangladeshi men admitted to rape their wife or intimate partners and 10.4 of urban Bangladeshi men acknowledged raping their wife or intimate partners in different time zone of their life.<sup>xxxii</sup> In July 2014 – September 2015, several studies were conducted in five districts of Bangladesh to know the percentages of woman subjected to marital rape. In each district, participants were divided into two groups. One group consisted of rural people with no education; especially the working class people and the other group consisted of urban people with education (at least those completed secondary education or equivalent). Each group consisted of 50 participants. Total number of participants who participated in the study was 500. The survey put forward the following questions to the participants.

- a. Did you force your wife to sex with you knowing that she was reluctant?
- b. Did you sex with your wife when she did not want to, but you believed that she would agree because she is your wife?
- c. Did you force your wife to participate other sexual act without having sex without her consent?
- d. Did you batter your wife for not having sex with you?

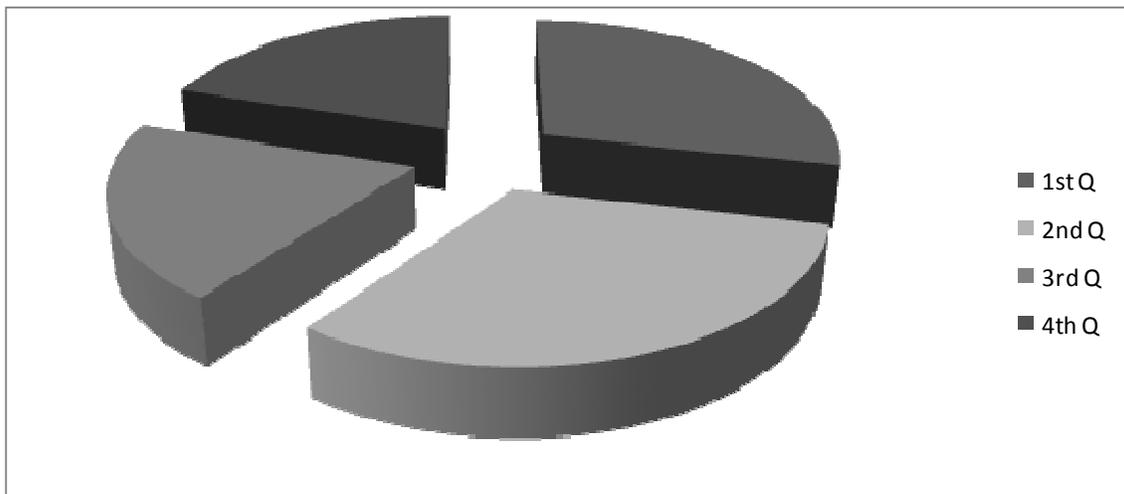


These questions were presented to Group A and Group B in Natore district. Group A was comprised of rural people with no education, and Group B consisted of urban people with education. 12% of participants of Group A responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 12.5% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 10% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 7% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.

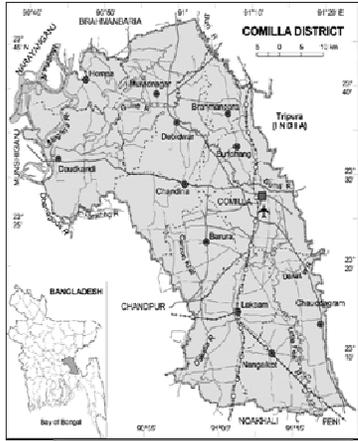


**Chart One: the prevalence of marital rape within relationships (Based on findings of Group A)**

10% of participants of Group B responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 11% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 7% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 7% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.

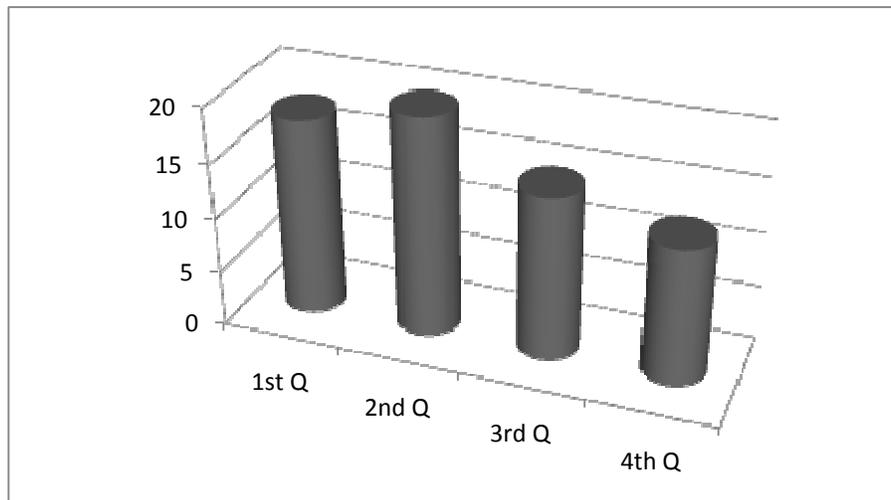


**Chart Two: the prevalence of marital rape within relationships (Based on findings of Group B)**



The foregoing questions were presented to Group A and Group B in Comilla district. Group A was comprised of rural people with no education, and Group B consisted of urban people with education. 18% of participants of Group A responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 20% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 15% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 12.5% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for

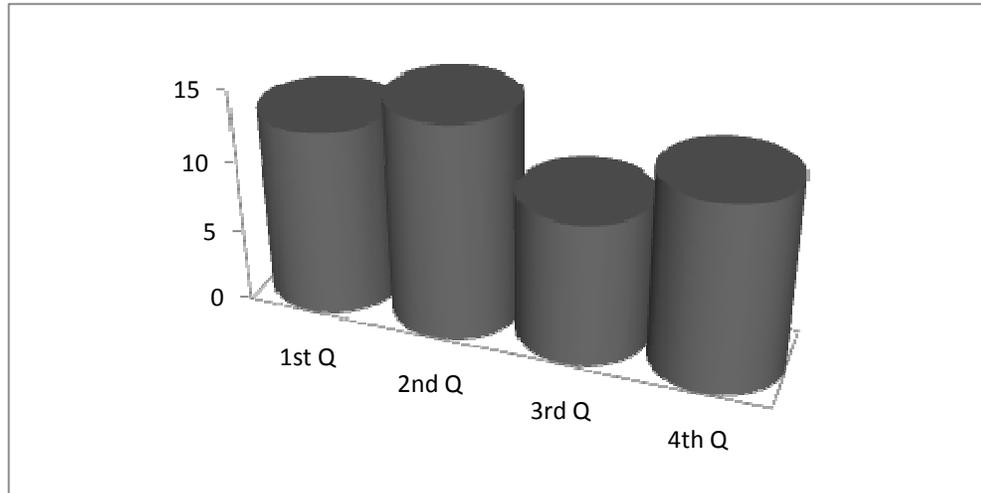
sex.



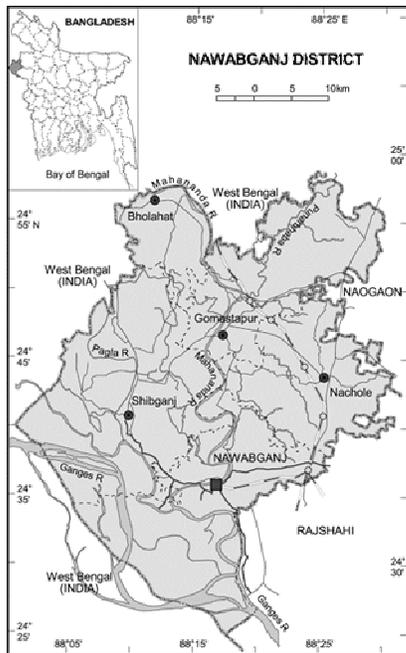
**Chart Three: the prevalence of marital rape within relationships (Based on findings of Group A)**

13% of participants of Group B responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 15% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 10% of participants of Group A

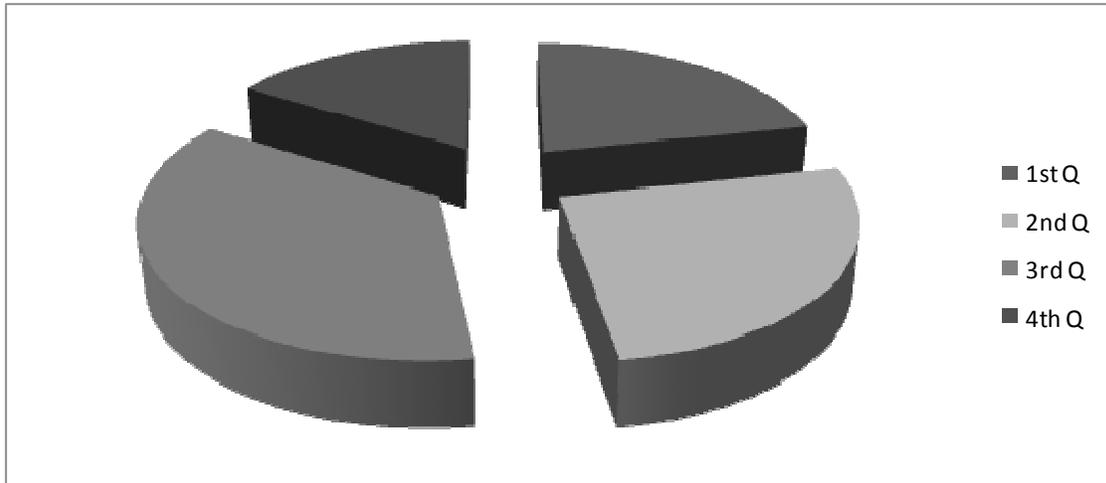
responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 13% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



**Chart Four: the prevalence of marital rape within relationships (Based on findings of Group B)**

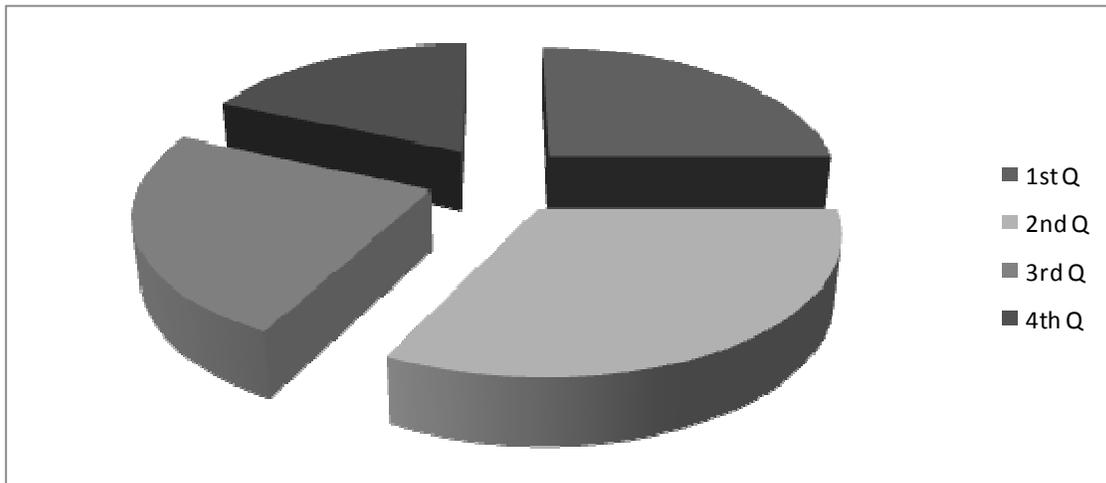


The same questions were presented to Group A and Group B in Nawabganj district. Group A was comprised of rural people with no education, and Group B consisted of urban people with education. 12% of participants of Group A responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 14.5% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 20% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 9% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.

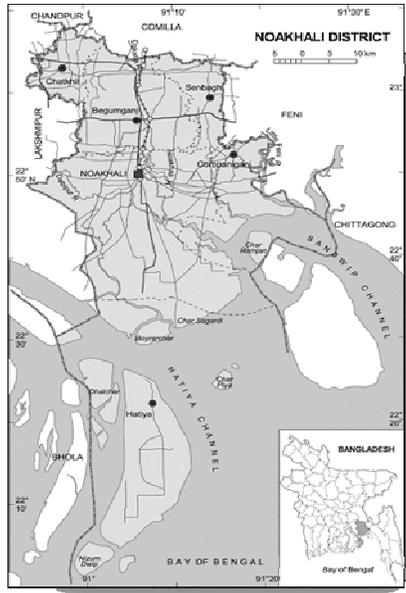


**Chart Five: the prevalence of marital rape within relationships (Based on findings of Group A)**

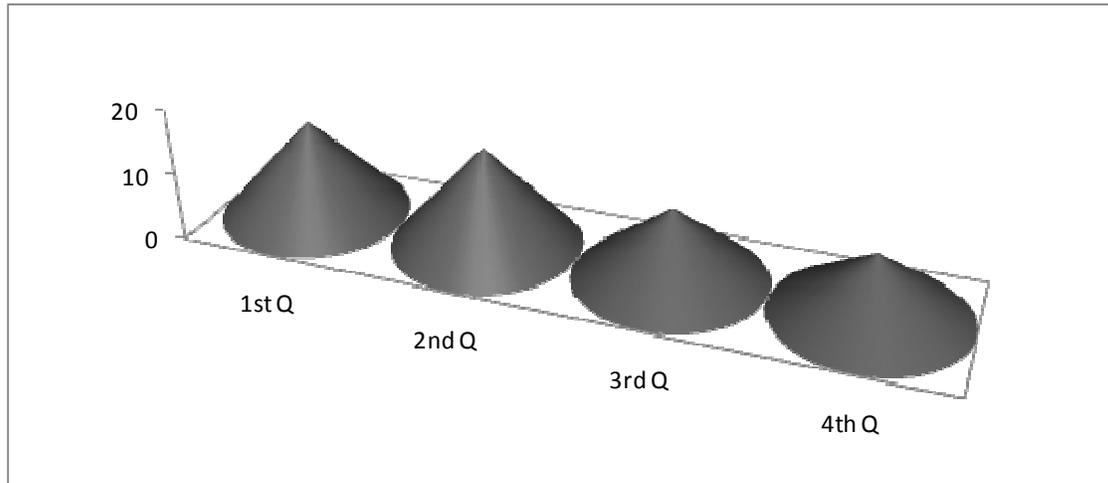
11% of participants of Group B responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 13% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 9.7% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 7.3% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



**Chart Six: the prevalence of marital rape within relationships (Based on findings of Group B)**



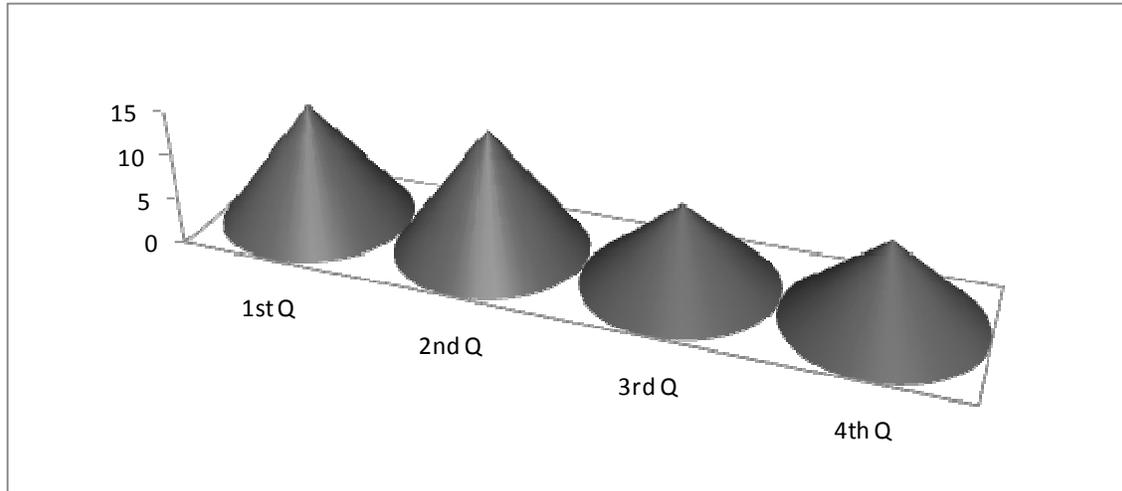
The same questions were presented to Group A and Group B in Noakhali district. Group A was comprised of rural people with no education, and Group B was consisted of urban people with education. 14.5% of participants of Group A responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 15% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 10.8% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 9.6% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



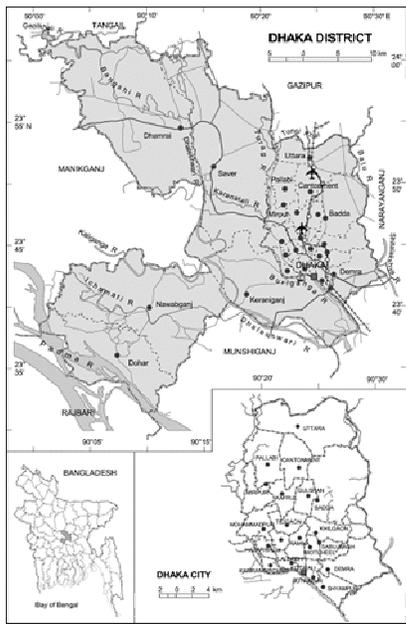
**Chart Seven: the prevalence of marital rape within relationships (Based on findings of Group A)**

13% of participants of Group B responded to question no.a and stated that they had forcefully sexed with their wives in their life time.13.5% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that

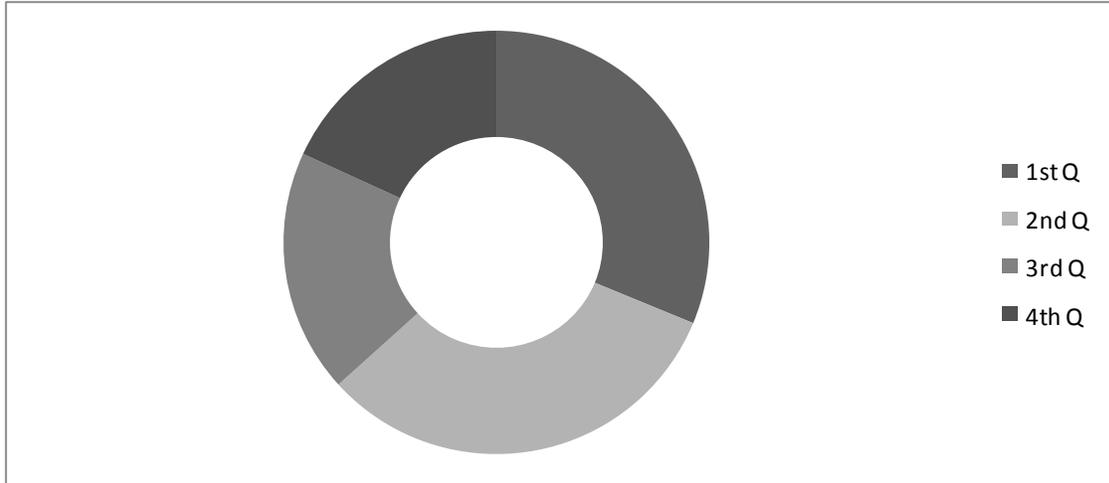
time, believed that she would agree because she is the wife. 9% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent.9% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



**Chart Eight: the prevalence of marital rape within relationships (Based on findings of Group B**

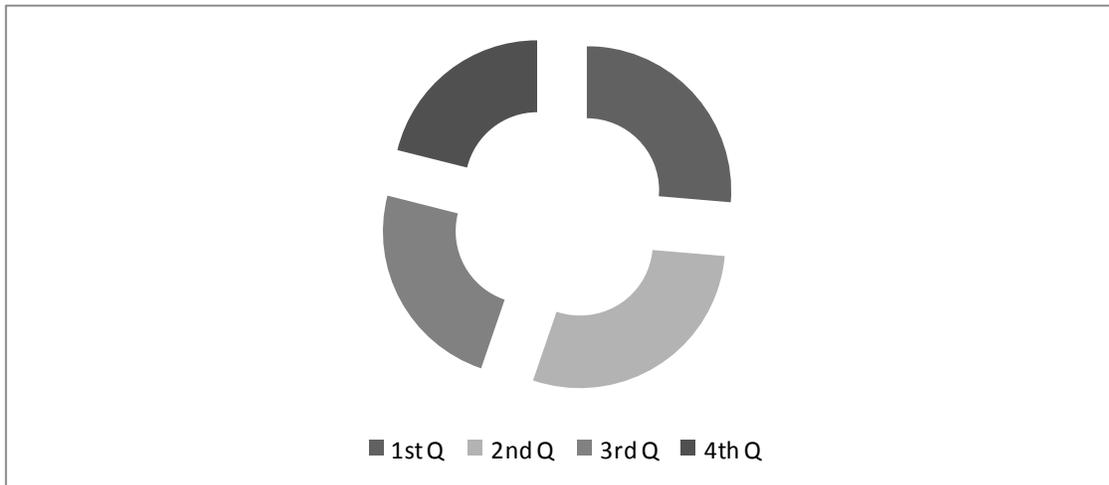


The same questions were presented to Group A and Group B in Dhaka district. Group A was comprised of rural people with no education, and Group B consisted of urban people with education. 16.5% of participants of Group A responded to question no.a and stated that they had forcefully sexed with their wives in their life time. 17% of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 9.8% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent. 9.6% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



**Chart Nine: the prevalence of marital rape within relationships (Based on findings of Group A)**

10% of participants of Group B responded to question no.a and stated that they had forcefully sexed with their wives in their life time.11 % of participants of Group A responded to question no.b and stated that they had sexed with their wives when she did not want to, but they at that time, believed that she would agree because she is the wife. 9% of participants of Group A responded to question no.c and stated that they have forced their wives to participate sexual act (without having sex) without her consent.8% of participants of Group A responded to question no.d and stated that they battered their wives for not consenting for sex.



**Chart Ten: the prevalence of marital rape within relationships (Based on findings of Group B)**

Conclusion: At present a lot of countries have either enacted marital rape laws, or repealed marital rape exceptions or have laws that do not distinguish between marital rape and ordinary rape. The criminalization of marital rape in these countries indicates that marital rape is now recognized as a violation of human rights. Marital rape is now an offence punished under the criminal law in at least 110 countries and unfortunately Bangladesh is not one of them. Even though marital rape is omnipresent in Bangladesh, it is hidden behind the sacred veil of marriage and legal loopholes. Statistics shows that one and a half million women annually are being raped with impunity by their husbands, and it is difficult to rationalize the fact that legislators have still failed to respond to address the issue. Many suggested that the frequency of the crime may cause the sluggishness of male legislators to repeal the marital exemption statutes. A conventional feminist or legal understanding of consent and coercion is inapplicable in the specific notions of consent of rape in Bangladesh. Indeed, the binary logic of the law leaves no room in legal discourse for sexual experience except in terms of consenting or not consenting to male pressure.<sup>xxxii</sup> This binary failed to protect a woman from getting raped within marriage. Therefore, law should be amended or enacted to recognize rape within wedlock in Bangladesh.

## Endnote

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- <sup>i</sup> Taylor, L., & Gaskin-Laniyan, N. (2007). *Sexual Assault in Abusive Relationships*. *NIJ Journal*, (256). Retrieved from <http://nij.gov/journals/256/Pages/sexual-assault.aspx>, Retrieved on 9/7/14
- <sup>ii</sup> **Tim Mak (2015)**, *Ex-Wife: Donald Trump Made Me Feel 'Violated' During Sex*, Retrieved from: <http://www.thedailybeast.com/articles/2015/07/27/ex-wife-donald-trump-made-feel-violated-during-sex.html>, Retrieved on: 15/9/2015
- <sup>iii</sup> Samantha Allen(2015) *Woman reveals she was raped in her sleep over 300 times - by her own husband*, *The Daily Merror*, Retrieved from: <http://www.mirror.co.uk/tv/tv-news/woman-reveals-raped-sleep-over-4977362>, Retrieved on 9/9/15
- <sup>iv</sup> Diana Russell(1982), *Rape in Marriage*. New York; Macmillan,
- <sup>v</sup> Christine Ferro(2008),Jill Cermele,Ann Saltzman, *Current Perceptions of Marital Rape :Some Good and Not-So-Good News*, *Journal of Interpersonal Violence*, published on February 13, 2008, [www.d.umn.edu/cla/faculty/jhamlin/3925/4925HomeComputer/Rape%20myths/Marital%20Rape.pdf](http://www.d.umn.edu/cla/faculty/jhamlin/3925/4925HomeComputer/Rape%20myths/Marital%20Rape.pdf)
- <sup>vi</sup> David Finkelhor and Kersti Yllo(1985), *License to Rape; Sexual Abuse of Wives*,New York: Holt Rinehart, & Winston,
- <sup>vii</sup> James Schouler(1970), *A Treatise On The Law Of The Domestic Relations* 16-21 Boston, Little, Brown, & Co.
- <sup>viii</sup> Article 2, 48/104. *Declaration on the Elimination of Violence against Women*
- <sup>ix</sup> David Finkelhor and Kersti Yllo(1985), *License to Rape; Sexual Abuse of Wives*. New York: Holt Rinehart, & Winston
- <sup>x</sup> Dr. David Finkelhor's testimony in support of H.B. 516 to remove spousal exemption to sexual assault offenses, before the Judicial Committee, New Hampshire State Legislature (Mar. 25, 1981), quoted in Warren, 255 Ga. At 152 n.4, 336 N.E.2d at 222 n.4.
- <sup>xi</sup> Yakubu, J.A, (1990) "The Rape Crisis: Society on Trial," *The Advocate*, Vol.14&15. Pp.34-40
- <sup>xii</sup> *People V Alberta* (1984) *N.Y 2d* 154, P.167.
- <sup>xiii</sup> Hale, *History of Pleas of the Crown*, p. 629

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- xiv *That Hale's pronouncement was accepted as an enduring principle of the common law is evidenced by the first edition of Archbold, A Summary of the Law Relative to Pleading and Evidence in Criminal Cases (1822), which simply stated: 'A husband also cannot be guilty of a rape upon his wife.'*
- xv *Equal Protection Considerations, supra, n. 6, 16 N.Eng.L.Rev., at p. 21*
- xvi *Blackstone's Commentaries [1966 ed.], p. 430*
- xvii **R V R [1991] 3 WLR 767**
- xviii **R V CLARENCE (1889) 22 QB 23**
- xix *as Hawkins J described it, was finally identified as a fiction in R v R [1992] 1 AC 599.*
- xx *R v Clarke [1949] 2 All ER 448*
- xxi [https://en.wikipedia.org/wiki/Marital\\_rape#cite\\_note-121](https://en.wikipedia.org/wiki/Marital_rape#cite_note-121)
- xxii **R V MILLER [1954] 2 All ER 529**
- xxiii *R v O'Brien [1974] 3 All E.R. 663*
- xxiv *[1977] Crim L.R. 290*
- xxv *Crim L. R. 188*
- xxvi *Irene Hanson Frieze(1983), "Investigating causes and consequences of Marital Rape," Signs. Vol 8, no. 3, 1983, P. 532-555.*
- xxvii *Irene Hanson Frieze(1983), "Investigating causes and consequences of Marital Rape," Signs. Vol 8, no.3, 1983, P. 532-555.*
- xxviii *Whoever has sexual intercourse without lawful marriage with a woman not being under fourteen years of age, against her will or with her consent obtained, by putting her in fear or by fraud, or with a woman not being above fourteen years of age with or without her consent, he shall be said to commit rape.*
- xxix *The legal framework of Bangladesh's rape law, <http://blogs.dw.com/womentalkonline/2013/12/04/the-legal-framework-of-bangladeshs-rape-law/> retrieved on: 10/10/2015*
- xxx *Zyma Islam( 2015), Most abused at homes : 87pc married women tell of torture by husbands, January 26, 2014 / LAST MODIFIED: 01:53 AM, March 08, 2015, the Daily sStar, <http://www.thedailystar.net/most-abused-at-homes-8422>*
- xxxi *Summary Report - Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country Study on Men and Violence in Asia and the Pacific, <http://www.partners4prevention.org/node/516>*
- xxvii *Dina M. Siddiqi(2014), "Gender, Nation, Islam: The Social Life of Bangladeshi Fatwas," in Communalism and Globalization in South Asia and its Diaspora, edited by Deanna Heath and Chandana Mathur, London: Routledge.*