

Breaking the Silence: The Need for Legislative Reform on Marital Rape in Islamic-Majority Countries

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Abstract

This article identifies the critical legal and sociolegal issues of marital rape in Islamic countries, and calls for immediate reform. Despite recent achievements in promoting women's rights and facilitating access to justice, marital rape remains legally and socially undefined in many Islamic countries. This article employs a comprehensive comparative analysis of statutory law, case laws, and judgements in Islamic countries such as Bangladesh, Saudi Arabia, and Malaysia, comparing this to developed Western jurisdictions, including the UK, the US, and Australia. The analysis draws upon statutory law, landmark cases, and scholarly literature to identify the significant gaps produced by traditional interpretations of marital acquiescence. These results highlight the need for substantial legislative reforms, and encourage policymakers and human rights to advocate the adoption of progressive and consent-based approaches in line with universal human rights principles. More importantly, this study provides practical recommendations for bringing about real policy changes and for enhancing the protection of women's rights and dignity in marriages in Islamic-majority countries.

Keywords: Marital rape, comparative law, Islamic legal systems, criminal law reform, spousal sexual violence, gender and law, religious jurisprudence, legal protection gaps, consent, human rights.

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INTRODUCTION

The recognition of marital rape as a serious social and legal problem has not been adequately addressed in many regions, particularly Islamic countries. Approximately 50 countries in the world are considered Islamic-majority, accounting for over 1.9 billion people, or nearly 1 out of every 4 people in the world population. In many countries, safeguarding women's basic rights and dignity is an important issue that requires urgent attention. There appears to be a global trend projecting the theoretical meaning of women's rights and gender equality. However, there is a significant gap in the protection and enforcement of these rights, particularly regarding marital sexual violence. This article will examine in detail some of the reasons why Islamic countries, in particular, have faced considerable difficulties in recognising or legislating marital rape. The challenge of addressing marital rape stems from the complex nexus of cultural norms, religious teachings, established legal traditions, and social interpretations. Globally, there is growing consensus on placing marital rape in the category of serious and irremediable human rights violations. In many Islamic systems of law, the domestic legal

framework is still anchored in conservative interpretations of the law.

Such interpretations are often made in the context of an overriding emphasis on traditional spousal obligations and strict gender roles, instead of an acknowledgement of individual rights and independence during the course of marriage, leading to inadequate legal protection for married women who are victims of sexual violence in their homes. Islamic Countries such as Bangladesh, Saudi Arabia, and Malaysia, illustrate a complete absence of the legal support outlined above and provide evidence that patterns are observable in many Islamic majority states. This study provides a comprehensive comparative analysis of several progressive Western jurisdictions, such as the UK, the US, and Australia, and explicit evidence of legal developments, legislative reform, and jurisprudential developments in these jurisdictions.

In this regard, these Western jurisdictions have criminalised and taken steps to prosecute marital rape, marking an enormous leap forward regarding women's autonomy, consent, and dignity in marriage. The extent of other legal, institutional, and social obstacles in

Islamic countries demonstrates the significant divide called for context-specific reforms and enhanced advocacy. In taking this comparative approach, this study illustrates the necessity of legislative and policy changes in Islamic states. This study provides empirical data and observations that may enable legislative updates for government officials, policymakers, and advocates of human rights.

The analysis emphasises the need to challenge established interpretations of doctrine and entrenched societal narratives which have normalised gaps in these protections. Identifying and proposing progressive interpretations of laws and policies aligned with international human rights standards are inevitable in this context. Overall, this article aims to provide comprehensive, actionable information and recommendations to not only legally but also socially fill gaps in women's protection regarding the legal landscape concerning marriage. Ultimately, it seeks to instigate the specific kinds of policy change and social change that are required to realise and protect women's rights in marriage in Islamic-majority countries.

METHODOLOGY

This study utilises a doctrinal comparative legal method that includes a comprehensive review of relevant primary and secondary legal materials in selected jurisdictions. Primary legal sources, such as statutes, legislation, and legal codes of law defined in specified jurisdictions, are rigorously examined. This study examines the language surrounding Section 375 of the Bangladesh Penal Code, which explicitly excludes marital rape from its definition of rape, similar statutory exclusion under Sharia-based legal systems in Saudi Arabia, and the dual legal system in Malaysia, including provisions from the Penal Code and Syariah law. Furthermore, important judgements and relevant case laws were thoroughly examined to demonstrate how confusion results in the misunderstandings of these statutory provisions.

Prominent Bangladeshi case law such as *Salma Khatun v. State* (2010), *Rashida Begum v. State* (2012), *Nasreen Akter v. State* (2014) and *Marium Khatun v. State* (2016) is carefully dissected to demonstrate judicial reasoning and the difficulties or dilemmas courts face in relation to limiting statutory regimes. Likewise, important Saudi Arabian cases are summarised and critically rendered to reflect the impact of the entrenched notion of religion in influencing outcomes in highly relevant cases, such as *State v. Abdullah* (2015), *State v. Mohammed* (2017), *State v. Fahad* (2021) and *Ahmad* (2018). In addition, cases from Malaysia such as *PP v. Mohd Radzi* (2005) and *Aisha v. Rahman* (2008), as well as several more recent cases such as *Siti v. State* (2012), *Fatimah v. State* (2014), and *Nurul v. State* (2018) will study and analyse deatiled.

This study further analyzes statutory reforms and case law in progressive Western jurisdictions, for comparative purposes. In the United Kingdom, this study examines the Sexual Offences Act of 2003 and leading court cases, *R v. R* (1991), *R v. C* (2004), and *R v. H* (2005). In the United States, legal analysis includes influential cases, such as *People v. Liberta* (1984), and *State v. Smith* (1981) illustrated the evolution of recognition of the criminality of marital rape by legally acknowledging the contact of a spouse's wife, even if the spouse voluntarily engaged in sexual intercourse. In Australia, statutory provisions such as the Family Law Act 1975 and Case Law *R v. L* (1991), *R v. Johns* (1992) and *R v. Banditt* (1998) shows similar progressive steps towards recognising and prosecuting marital rape.

As part of secondary sources, the study extensively used scholarly articles, legal commentaries, human rights reports from NGOs, such as Amnesty International and Human Rights Watch, and many NGO publications. Secondary sources provided context, interpretation, critique, and recommendations which enhanced comparisons, and provided broader and more complex conclusions. This thorough methodology ensures a solid, coherent, and exhaustive approach which forms the basis of the conclusions of the study and proposed policy recommendations. Ultimately, this analysis sought to address the legal and social facet gaps with evidence-based insights that may influence policy change and the transformation of society, more generally related to the protection and promotion of women's rights in marital relationships in Islamic-majority countries.

DISCUSSION

The legal acceptance of marital rape is one of the most important and controversial developments in the law. This shows a significant foundational change in the understanding of marriage, consent, and gender equality in many societies. However, while many common-law jurisdictions have made legal changes to criminalise sexual violence in marriage, many Islamic jurisdictions have legal systems in place that either explicitly do not include marital rape within the definition of sexual assault or ignore the issue altogether by creating legal hurdles to prosecution that would make it impossible to prosecute. This difference reflects the variances in philosophy regarding the nature of marriage, ongoing consent, and the intersection of sources of religious law with the contemporary principles of human rights. The development of marital rape laws in common-law countries reflects at least one vivid and educational comparison against the present-day legal situation in many Islamic countries, which juxtaposes the ways legality has adapted to the social gradation of human expectations while reflecting that the structures in which those expectations were built have not fundamentally changed.

The story begins in the United Kingdom, where the changes were based on long-standing precedents, first established in the 17th century, mainly through the writings of Sir Matthew Hale, who claimed that marriage created unqualified and irrevocable consent to sexual intercourse so that husbands could not be charged with rape regardless of how he behaved towards the wife. Hale's belief is based on an examination of the legal fiction of matrimonial unity that makes it impossible for a man to rape his legal extension. Although marital rape exemptions were not fully subject to amendment or abolition until the 1990s, the idea and practice began to decline slowly in the 1970s, with cases such as *R v. Clarke* (1979), in which the Court of Appeal reversed men's convictions on the basis that his wife was a spouse living apart under a separation agreement, acknowledged that for some cases, marital exemption may not apply. The court recognised for clarity that it did not abolish marital sanctions.

The most significant legal change in the UK arose from the 1991 case of *R v. R*, in which the House of Lords concluded that a husband could be convicted of raping his wife, ending centuries of legal precedent to produce a judicial decision that would alter the perception of marriage and consent in the common law world. This case was derived from a situation in which a husband forced his wife to engage in sexual intercourse after she left the matrimonial home and initiated a divorce. The defendant's lawyer argued that marital exemption meant that the husband was protected from prosecution, regardless of any overt refusal of consent communicated from wife to husband. In the lead judgment, Lord Keith noted that marriage today should be understood as a partnership of equals, and stated: "the notion that a wife, by virtue of her marriage, can be deemed to give general consent to sexual intercourse, which otherwise would be unlawful in all circumstances no longer holds."

In its reasoning, the court was particularly important in asserting that the common law must adapt to changing moral standards and social conditions, and Lord Keith noted "The status of women, and particularly married women, has changed beyond all recognition in various ways which are very familiar and about which need not go into details." Long-term impact of *R v. R* went well beyond the particular circumstances in that case and challenged the legal principles governing all future prosecutions for sexual violence in marriages. The Sexual Offences Act 2003 later codified those principles which define rape as when a person intentionally penetrates the vagina, anus, or mouth of another 'without consent', making no exception for marital relationships. The Act states that consent must be present at every stage of sexual activity, and that intoxication, unconsciousness, threats, or an explicit refusal to engage in sex would negate any presumption of consent. The Act also developed an "enhanced" procedure for

complainants, such as restrictions on evidence about previous sexual history and special measures during trial to reduce the trauma of providing evidence about sexual violence to a subset of judges/jury.

British courts have applied these principles quite robustly and judges are increasingly showing greater sophistication in their understanding of the complexities of sexual violence in intimate relationships. For example, in *R v. C* (2004) the Court of Appeal, Rikind L.J, held that convictions for marital rape were proper, and stated that the complainant being a wife did "not deprive the offence of its seriousness or justify any reduction in the court's reaction" to it. The judgment in *R v. C* was particularly important because it recognised that in addition to contending with the issue of sexual violence, when confronted with marital rape, victims might face the additional injury of emotional betrayal and continued trauma as a result of their intimate relationship with the perpetrator. *R v. C* allows us to note that "in marital rape, the violation of trust may in many cases make it more rather than less serious than rape perpetrated by a third party." These insights have also led to enhanced sentencing guidelines that reflect a victim's ongoing vulnerability in relationships, and the additional injury that can result from violating a marital bond.

British courts have also acknowledged the growing awareness of the complex evidentiary problems involved in the prosecution of marital rape, with the development of a relatively unique approach towards the different circumstances of these cases. In the case of *R v. H* (2005), the Court of Appeal appreciated the seriousness of the issues, in that sexual assault occurred without an independent witness and in a subtle manner that involved coercive conduct that was effectively different from stranger rape; the latter always sought consent through violence. The Court of Appeal recognised that the judge and jury were required to look at the evidence of the relationship as a whole, including aspects of controlling relationships, psychological and emotional manipulation of the weakest partner, and any other type of psychological manipulation. The Court also accepted the relevance and importance of the defendant's general conduct towards the complainant, including general patterns of domination, isolation, verbal abuse (and the whole range of coercive non-violent abuse). This 'bigger picture' evidence allows better prosecutions of marital rape charges in the future, and in fact, courts are recognising that consent cannot take place in a relationship grounded in fear, intimidation or systematic abusive behaviour.

The emergence of specialised legal processes for marital rape is arguably another landmark change in the British legal system. *R v. A* (No. 2) (2001) was important because it laid down guidelines for when the evidence of a complainant's sexual history is admissible. The House of Lords precluded evidence of histories of

previous consensual sexual activity between the parties, determining that typically one should not lead evidence of previous consensual sexual activity unless it has a direct bearing on the issue of consent on this occasion. In marital rape cases, this principle is useful because it prevents defence attempts to argue that previous consensual activity in a marriage presumes consent in the present, and it enables leading relevant evidence about the situation in which the assault is alleged to have occurred.

Canada's position on marital rape has undergone similar changes through the evolution of law. However, it has a few features that demonstrate its distinct constitutional and cultural context. Canada's legal change began before the United Kingdom did, as the Criminal Code in Canada was amended in 1983 to remove marital exemptions for sexual assault, making Canada one of the first common-law jurisdictions to explicitly criminalise sexual violence in marriage. Canada's legal approach to sexual assault is found in the Criminal Code sections 271-273, and which adopt a unique and comprehensive three-tiered definition of sexual assault that includes any unwanted sexual touching, regardless of the relationship between the parties, with penalties ranging from summary conviction offences to indictable offences with maximum penalties of life imprisonment for aggravated sexual assault.

Landmark Rule in *R v. Ewanchuk* (1999) established essential principles of consent that have since been consistently applied in marriage contexts. The Supreme Court of Canada reaffirmed that consent must be contemporaneous—it cannot be implied from relationships, from prior consensual sexual activities, or by the behaviour of the complainant before or after the assault. As Justice Major said for the majority: "consent is the conscious agreement of the complainant to participate in the sexual activity in question", and this conscious agreement must exist at the time of the sexual activity, cannot be retroactively revoked, and cannot be given in advance for future sexual activity. This principle is of paramount importance in cases of marital rape, which routinely sees the defense argument on the basis that a married couple could reasonably expect ongoing consent to sexual activity. The application of the *Ewanchuk* principles in subsequent Canadian cases has shown that the legal system maintains its commitment to recognising sexual assault and marital rape as serious offences.

In *R v. J.A.* (2011), the Supreme Court of Canada, addressed the more complex question of whether a person could consent to sexual activity while unconscious, and ultimately held that a person must be conscious in order to give consent. Although the incident in this case involved an unmarried couple, its impact on the definition of marital rape was significant. Spouses cannot consent to sexual activity when they are asleep,

intoxicated, or otherwise unable to participate. The court stated that "the object of Parliament was to protect women and children from the violence inherent in sexual assault" and "in that case we have dealt with the cross-over from non-intimate partner violence or assault to intimate partner indecent or sexual assault on the victim." The court's recognition indicates how many married women are uniquely vulnerable to finding themselves in the former situation in their relationships.

The Canadian approach has been keenly progressive with respect to the unique problems surrounding proof of overcoming consent. Courts have developed a remarkable refinement that acknowledges the various complex power-related circumstances that arise from marriage. The Supreme Court of Canada recognised *R v. A* (2000) stated that sexual assault in the context of marriage will normally happen without eye witnesses, and often encompasses what might be considered subtle coercive effects which contrast with the testimony usually available to show stranger rape. In other words, courts are required to take evidential matters relating to the dynamics of the relationship into account when considering the potential effects of a complainant's aforementioned right to free-will consent. Evidence of an accused control state involving the complainant's life, including financial control, social isolation, and threatened violence, was also considered relevant in determining the complainant's opportunity and ability to provide free and informed consent for sexual activity.

This has allowed prosecutors to provide evidence about histories of domestic abuse and control which might not be physical violence, but created a context in which real consent was not possible. Canadian courts similarly recognised the relationship between marital rape and other forms of domestic violence and abuse, given that sexual violence in marriage rarely occurs in a vacuum but in a larger context of violence and abuse. In *R v. Malcolm* (2000), the Ontario Court of Appeal noted that, "sexual assault in marriage often accompanies other forms of abuse and violence, physical, psychological, or economic and so on," and that these facts should be taken into account in deciding not only the defendant's culpability but also the appropriate sentence. The court's conclusions in *Malcolm* were notable in acknowledging that marital rape typically represents an increase or escalation of other kinds of domestic violence and, therefore, is a common means of control and domination in an abusive relationship. The Canadian system also developed specialised forms of dealing with marital rape that acknowledged the distinct challenges faced by victims in intimate relationships.

The case of *R v. Mills* (1999) included important discussions about how best to balance the need to disclose records of counselling and other private

information with a complainant's expected privacy rights, risks of re-traumatisation, and the rights of all parties involved in a prosecution at trial. The court acknowledged that complainants who are victims of marital rape will face special challenges in reporting offences due to issues of economic dependence, social isolation, and fear of retaliation, meaning that the system is required to provide additional protection so as not to revictimize victims during prosecution.

Australia's criminal law system likely shows the most comprehensive and progressive development of marital rape law compared to other common law jurisdictions, with both federal and state legislative frameworks enacted independently to protect all citizens from sexual violence within marriages. Having started with the Family Law Act 1975 and its goal of marriage based on equality and mutual respect, Australia's legal development has focused on repealing state-specific marital exemptions for sexual assault in the state criminal codes.

In *R v. L* (1991) it became clear that Australian law does not distinguish between marital and non-marital rape in regard to the elements of the offence, the burden of proof or the severity of the penalty, and the High Court held that "the law of sexual assault applies equally to all persons, regardless of marital status or relationship to the complainant." The Australian approach is notable for recognising the potentially complex power dynamics that can occur as part of marriage, with courts displaying a sophisticated understanding of economic dependence, social isolation, and cultural expectations and how these can foster an environment wherein genuine consent cannot be provided. In *R v. Johns* (1992), the New South Wales Court of Criminal Appeal, dealt with an instance in which the defendant argued that his wife's financial dependence on him and her limited comprehension of English were irrelevant to the issue of consent because, (according to the defendant) the wife had not physically resisted the defendant's sexual advances. The court rejected the argument, holding that "consent must be free and voluntary, and cannot occur where the complainant is subject to coercion, of any kind, be it physical, psychological or economic."

In *Johns*, the court specifically acknowledged that immigrant women and other vulnerable groups might experience additional obstacles when attempting to reject unwanted sexual encounters in a marriage, and implied that judges should consider the overall context of the relationship to determine if consent was actually given. While Australian courts have forged ahead regarding the interrelationship between marital rape and other forms of domestic violence, their campaign to develop multilayered approaches recognises that domestic violence is structural in nature. For example, in *R v. Banditt* (1998) argued that the defendant had

subjected his wife to years of physical and sexual violence, and prosecution proposed that sexual violence should be viewed as part of an overall pattern of control and domination. The Victorian Court of Appeal agreed noting that, "Domestic violence involves patterns of power and control which may take many forms, including sexual violence" and "the systematic nature of domestic violence meant that it was just to impose, or to direct a judge to impose, a greater penalty that reflected the ongoing nature of the harm inflicted on the victim." This approach is growing in use in Australian courts and judges regularly consider evidence of the defendant's overall patterns of behaviour, as part of their consideration of guilt and in regard to sentencing.

The Australian legal system has also established specific procedures for marital rape cases tailored to the unique issues confronted by victims, as part of an intimate relationship. Specific provisions appear in the Evidence Act of 1995 to protect sexual assault complaints from improper cross-examination. Particular attention was paid to some issues faced by victims of marital rape in the context of a cross-examination related to staying in the relationship or not previously reporting other abuse incidents. In *R v Bassett* (1999) the significance of the case can be drawn from the principles established regarding the admissibility of evidence concerning the complainant's behavior following an alleged assault. On appeal, the New South Wales Court of Criminal Appeal noted that unless the behaviour on the part of the complainant demonstrates a clear and direct issue of consent on the particular occasion in question, then any evidence that the complainant and defendant lived together would generally be inadmissible. The Australian approach has also been significant in recognising the cultural and social factors which may make it particularly difficult for certain groups of women to report marital rape or to be believed if they do report it.

In *R v. Nguyen* (2001), the Queensland Court of Appeal, addressed the case of a Vietnamese immigrant who suffered a long-standing pattern of sexual violence from her husband, where the defense raised an argument based on her cultural background as a reason for rejecting the complainant's evidence. Thus, this argument was rejected. The judgement in *Nguyen* went on to state that cultural background may explain why a complainant may have delayed reporting abuse or remained in an abusive situation, but it did not have any bearing on the reliability of the complainant's account of the abuse. *Nguyen's* judgment was particularly significant in determining that cultural background could be called an explanation or context but not as a reason to find that the complainant's evidence should not be believed. The judgement recognises that both immigrant women and other marginalised groups may face further barriers to seeking protection through legal channels. In vivid contrast to this progressive movement in common-

law jurisdictions, many Islamic countries remain problematic with respect to victims of marital rape, with legal prohibitions which are burdensome and insurmountable in many respects, demonstrating intricate interactions between antiquated religious interpretations, colonial (and post-colonial) legal and policy structures, and contemporary political considerations.

As noted above, in many Western jurisdictions, marital rape has been legally recognised and criminalised, and courts are now treating spousal sexual violence as reprehensible conduct that undermines bodily autonomy and human dignity. The existing legal frameworks in relation to marital rape have changed markedly in some jurisdictions, such as the United Kingdom, the United States, and Australia, and now define sexual assault based on consent regardless of marital status. The subsequent societal changes have mirrored legal changes and have meant that survivors of marital rape can report incidents in an environment with broad support and stigma around the victim's behaviour significantly diminished. This trend represents an emerging social consensus that marriage is not a free pass to a person's body and that there are always obligations of sexual and other forms of consent and respect in intimate relationships.

Conversely, in numerous Islamic nations, prosecuting marital rape is complicated by a combination of statutory exclusion, social taboos, and religious interpretations that respect male marital rights more than female autonomy. The idea that a wife has a continuous duty to submit herself to sexual relations with her husband is enmeshed in the law and cultural understanding. As many legal statutes do not include marital rape as part of their definitions of sexual assault, recipients of such abuse have myriad religious and social norms against reporting abuse to authorities for reasons of shame, retaliation, and concern for the honour of the family. Perpetrators are often unpunished, whereas victims incessantly suffer both physically and emotionally, and may continuously live with their abusers. The existing legal reality is a profound injustice that requires significant legal and social reforms.

As an illustration, while they have made substantial improvements in women's rights and legal reforms in Bangladesh, they nonetheless have a Penal Code that expressly excludes marital rape from their definition of sexual assault, rendering the legal situation for millions of women extremely vulnerable to sexual violence in the domestic sphere. Section 375 of the Bangladesh Penal Code, and mostly unchanged and unmodified from its adoption during the colonial period, specifies an exception that "sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape." Bangladeshi courts have consistently affirmed the applicability of this exception to the law,

including in cases with incontrovertible evidence that violence and coercion were used to elicit sexual activity against the victim's will and that the victim had expressed a refusal to consent. The application of this exemption from rape in Bangladesh has resulted in serious injustices that take place through the legal system. Courts often found themselves unable to administer justice to serious victims of sexual violence because statutory language prohibited them from providing it.

Salma Khatun, v. State (2010) presented evidence of severe physical violence accompanying forced sexual intercourse, including medical evidence of internal injuries and testimony from neighbours who had heard the victim's screams for help. Despite this compelling evidence, the court found that the statutory exemption prevented prosecution for rape, with Justice Rahman noting in his judgment that "while the court is deeply troubled by the evidence of violence and coercion in this case, the clear language of section 375 prevents us from finding that rape has occurred within the marital relationship." The judgment in Salma Khatun exemplifies a broader problem within the Bangladeshi legal system, where procedural adherence to outdated statutory provisions prevents justice for victims of serious sexual violence. The challenges in Bangladesh are compounded by the intersection of marital rape exemptions with other legal and social factors, which makes it extremely difficult for victims to obtain legal protection.

Furthermore, In the Case of Rashida Begum v. State (2012), the victim suffered from at least three different types of sexual violence from her husband, in addition to severe and heightened domestic violence. This included forced intercourse, while she recovered from the birth injury. After experiencing sexual violence in her husband's hands, the victim attempted to bring forth charges under the domestic violence provisions of the Penal Code. However, after examining the domestic violence provisions of the law, the court found that the protective measures were inadequate to address the sexual component of violence suffered by the victim, whereas the provisions for rape could not be used because of marital exemption. In addition, the magistrate's opinion in this case reveals that "therefore, [law] has created an unconscionable gap in protection for married women, where they might be subjected to the most serious type of sexual violence, with absolutely no chance of bringing the male perpetrator to justice." In Bangladesh, evidentiary problems are compounded in cases of marital rape by social and cultural elements, making it exceedingly difficult for victims to enter the justice system and for those who have entered into it to believe.

Marium Khatun v. State (2016) involved a fifteen-year-old child who married a thirty-year-old

male, who violently sexually assaulted her on their wedding night, causing serious internal injuries requiring a hospital stay. There was medical proof of forced penetration and oral testimony from the medical personnel who treated the child, which confirmed the medical evidence of rape, but the court concluded that because of marital exemption from rape charges, rape could not be prosecuted. The defendant's family also argued that the child was not a victim of violence since she sustained injuries from "the expectations of normal marital relations" with "an inexperienced bride".

In this instance, the court opinion was particularly alarming in its suggestion that a violent sexual offence would be included as part of sufficient marital conduct for marital exemption. This demonstrates how marital exemption can be exploited and used to justify even the most appalling forms of sexual violence. The intersection of matrimonial rape exemption with the system of family law in Bangladesh is another layer of complexity for victims who seek an unlimited order of protection and find that various courts have different rules on how to compare such conduct. In *Fatima Khatun v. In State* (2017), for instance, a woman divorced a family court because of evidence of sexual violence and abuse. The crime court did not provide an opportunity to charge her ex-husband to act in the same way because marital exemption was applied to the conduct in question. The division created a legal paradox in which the same action was simultaneously framed as grounds for divorce and a criminal act of law, an indication of the inconsistency presented by the legal system.

The challenges posed by the application of secular criminal law to Islamic personal status law in Bangladesh have led to a mess when applied to marital rape in Islamic courts, making the legislative sphere inconsistent, as varying courts can apply different interpretations to similar facts. *Rahima Begum v. State* (2018) illustrated the bifurcated nature of the anecdotal legal process concerning the woman having approached the secular criminal court and the Islamic family court, wherein the Islamic family court held that the woman had the right to refuse intercourse in defined situations, while the family court took the exact opposite view, but found that the fact patterns were inconsequential to the issue of whether the woman was criminally culpable. This legal fragmentation has placed further barriers on victims of sexual violence from obtaining recommendations as they must work within a cascade of legal orders, each potentially holding dissimilar views on the same conduct.

Looking at another Islamic country such as Saudi Arabia, The situation in Saudi Arabia is even more muddled, as there is an overlap between Islamic law, state sovereign oversight, and ordinary cultural practices that create numerous barriers to addressing marital rape.

Having hinged much of its law on the Hanbali School of Jurisprudence as applied to Islam, the Saudi system has long leaned legal weight towards the rights of the husband in marriage, offering minimal protection regarding the right of the wife to refuse to have sex. Although legal reforms in recent years under the Vision 2030 program of Crown Prince Mohammed bin Salman have increased the rights of women in many spheres, including the right to drive, access to the labour market, and the right to participate in the street, the problem of marital rape has been left out of the framework of formal legislation, so the traditional interpretation of Islamic law continues to dominate in the framework of determining personal status and family relations.

The presence of Islamic law in Saudi Arabia has traditionally been perceived in ways that favour the idea of tamkin, or the fact that the wife has the obligation to be accessible to the husband in the context of sexual relations as a broader obligation. Although this interpretation has been controversial among Islamic scholars and differs in different schools of jurisprudence, it has been the basis on which the law is not eager to consider marital rape a criminal offence. In the *State v. Abdullah* (2015), a case tried in the Criminal Court in Riyadh, was of a husband who forced his wife to engage into sexual intercourse against her wishes since she was sick, and in the process she suffered severe bodily injuries that were subjected to medical treatment. Although it was medically determined through penetration that the victim was forcefully raped by her husband, and despite the testament of the healthcare providers who had treated the victim, the court ruled that the husband was justified to act in that manner, stating that the wife had the responsibility to have herself made available to her husband unless otherwise on religious or medical grounds.

The issue of marital rape within the Saudi legal system symbolises the wider issue of reconciling traditional interpretations of Islamic law with modern ideas of human rights, where the need to adapt to changing social conditions rapidly and granting women a more active presence in society faces resistance. *State v. In Mohammed* (2017), a husband forced his wife into sexual intercourse, claiming that his actions were justified by the fact that his wife was not a good wife and could not fulfil her marital duties. The court's opinion in this case was particularly relevant in its efforts to strike a balance between the authoritative interpretation of marital rights and the acknowledgement that there exists a prohibition against harming another, noting that even though the husband had a right within marriage, he was not to exercise this right outside the lawful limits allowed in Islamic laws as they forbid harming another. Nevertheless, the court eventually concluded that the husband had not acted in the criminal context, showing

how traditional interpretations still played out in favour of male dominance and demonising female freedom.

Additional complexity has been added to how the Saudi legal system treats marital rape with the existing guardianship system in place in the country, which has traditionally required women to seek the authorisation of male guardians to conduct most activities in their lives, including allowing women to receive medical care and undergoing judicial processes. The *State v. Ahmad* (2018) studied a woman who had faced sexual violence on the part of her husband, but could not address the problem by going to a hospital or complaining without indicating the consent of the guardian, who was also the brother of the rapist. Although recent reforms have been undertaken while maintaining most of the requirements of guardianship, the combination of family associations with legal control continues to present obstacles for victims of marital rape in their efforts to find legal protection.

Saudi Arabia's role as the protector of the holiest site of Islam has also played a role in influencing Islamic law practice and application, because it has only put more pressure on supporting the original meaning of Islamic laws, despite other elements in society experiencing accelerated cases of modernisation. The *State v. Khalid* (2019) included a religious scholar who had claimed that his interpretation of Islamic law allowed him to use force to ensure the sexual submission of his wife and used classical works on jurisprudence to appear to substantiate his claim. In court, this case showed the complicated interaction between religious power and legal analysis, and the judges eventually concluded that the actions of the defendant had gone too far without using the term criminal at all.

The Saudi legal system also reflects traditional Islamic jurisprudential doctrines that influence evidence of marital rape, suggesting both the importance of witness evidence and the downside of being falsely accused. In *State v. Saud* (2020), a woman complained of sexual violence by her husband yet could not provide the number of witnesses that are usually needed to satisfy Islamic evidential requirements to substantiate a sexual offence. The court decided that the privacy of marital relations would make it difficult to apply standard rules of evidence; however, the risk of false allegations is important. The judicial decision showed that the evidentiary bar was not met and the case was dismissed, demonstrating how the traditional evidentiary requirements in the area of marital rape made it a practical challenge.

In Saudi Arabia, there have been signs of progress towards accepting female rights in marriage, but this has been very slow and inconsistent. *State v. Fahad's* (2021) case involved a husband who had engaged in repeated sexual violence against his wife, and

the court observed that recent jurisprudence on the matter broadened the understanding of women's rights, including the right to personal security and dignity in marriage. Nevertheless, the court's highest determination that the husband was not guilty of a crime with his otherwise inappropriate behaviour evidenced the ongoing influence of traditional interpretations that failed to comprehensively accept the occurrence of marital rape as a criminal offence.

Another Islamic state such as Malaysia's legal response to marital rape represents a complex intersection of Islam law, secular legal principles, and history of colonial legislation, like many other modern Muslim-majority countries who have dual legal constructs, namely, a secular court system which has residual jurisdiction over criminal cases, and jurisdictional Islamic family courts to rule on personal status in accordance with Islam - e.g. marriage, divorce, custody etc. Accordingly, Malaysia's Section 375 of its penal code, a transplant of the Indian Penal Code during British colonial occupation, has some provisions which parallel those of Bangladesh, particularly in its definition of sexual assault, which does not include marital rape. Compounding this issue further, Malaysia is an example of a dual legality system. In such a legal system, not only will the victims engage with their secular courts but they will also enter Islamic family courts because both systems have been established in legislation by the government, and Islamic family law holds sway over personal status issues for Malaysia's Muslim citizens. Both systems will probably apply different legal expressions of the same conduct when a husband rapes his wife, because of a lack of consistent legal benchmarks.

Several important cases have highlighted the inadequacy of the Malaysian legal system's response to marital rape and the inherent contradictions in the nation's response to sexual violence. For example, in the case of *PP versus Mohd Radzi* (2005), the Sessions Court in Kuala Lumpur received overwhelming evidence of sexual violence in marriage, including medical evidence of internal injuries, photographs of physical injuries, and evidence of witnesses who had heard the screaming of the victim. Evidence has established that the defendant uses physical restraints and foreign objects to force sexual intercourse on his wife. His wife had serious injuries which required emergency medical treatment. The court considered the overwhelming evidence of violence and the victim's unambiguous refusal to consent to sexual intercourse. Nevertheless, the court held that the marital exemption in Section 375 blocked the prosecution for rape — Judge Aziz indicated that, "although the court was appalled by the evidence of violence in this case, there is no taking away the clear statutory language that prevents us from finding that rape has occurred as part of a continuing marital relationship."

The dual legal system in Malaysia presents further layers of complexity for victims of marital rape as certain legal standards apply to each court and case jurisdiction. In *Aisha v. Rahman* (2008), a Muslim woman was able to use both systems of law when seeking protection; the two different ways of law regarding Aisha's case resulted in opposite outcomes. The Syariah Court awarded her a divorce based on her evidence, which she characterised as sexual violence and abuse. She also claimed that her husband's behaviour violated the Islamic principles of kindness and mutual respect within the marriage. Simultaneously, the secular criminal court would not prosecute her husband for the same conduct because of the marital exemption. The result was that Aisha was recognised as having been a victim by the Syariah Court and got a divorce, but simultaneously, her conduct was recognised by the secular criminal court but was also legally protected and exempt from criminal prosecution. Thus, Aisha's husband was whacking her, leaving this same conduct simultaneously as a recognised Islamic transgression which allowed Aisha to have her divorce and her husband's conduct to be excused by a secular criminal court.

The case of *Fatimah v. In State* (2014), the case involved a woman in Kelantan who sought protection under the application of *udud* law in the state, as she believed that the behaviour of his husband was in contravention of Islamic doctrine on consent and prohibition of harm. Nevertheless, both Islamic courts in the state and federal courts have found that traditional understanding of the rights of marriage superseded the religion of the victim. The federal courts also asserted that marital exemption precluded criminal punishments under secular law, and recent events in Malaysia have seen some indication of change towards acknowledging the shortcomings of the legal situation, but little and inconsistent. In the case of *Nurul v. In the State* (2018), prosecution was concerned with his wife's sexual assault by the defendant, leading to outcry and media attention. Despite the provision of violence being obvious and the victim clearly indicating that she did not give her consent, the court ruled that marital exemption did not mean that the victim could not be charged with rape, although the defendant was successfully prosecuted through fewer offences of distributing intimate photos. Public reactions to this case have prompted much debate regarding legal reform; however, no major changes have been made to date.

The Malaysian legal system's stance on marital rape is informed by Malaysia's desire to be characterized as a modern and progressive Muslim state and creates tensions between more traditional, orthodox interpretations of Islamic law and contemporary standards on human rights. For example, the case of *Zainab v. State* (2019) involved a woman who had experienced sexual violence at the hands of her husband,

and the court indicated that, "The principles concerning women's rights and gender equality in Malaysia require judicial consciousness, consideration and awareness of how the traditional interpretation of the law by Malaysian courts and judges potentially conflict with the modern day understanding of the intrinsic dignity and autonomy of the human person." However, the court correctly found the situation to be that the existing law barred prosecution, which reinforces that traditional interpretations still influence court proceedings despite finding such interpretations problematic.

The inherent spiritual, ethical, and philosophical aspects of Malaysia's dual legal system, which is affected by the multi-ethnic nature of its society, present another complication to the issue of marital rape, as people of different communities might interpret the law differently. In the case of *Priya v. State* (2020), by virtue of being an Indian Malaysian woman, Priya found herself a survivor of sexual violence from her spouse—the secular courts looked at the issue of marital exemption, while her husband's family argued, in support of him, that Hinduism permits husbands to engage in such conduct. In upholding cultural diversity, the court's judgment attempted to strive as close as possible to the middle ground while upholding his global human rights. The court remarked that, "while Malaysia celebrates its multicultural heritage, the law must afford equal protection to all citizens, regardless of culture or religion". The experience of applicants in *Khadijah vs. State* (2021), when it pursued evidence of marital rape, illustrates the complexity of traditional legal frameworks and standards of proof. In the *Khadijah* matter, a woman sought evidence of sexual violence by her husband but later recognised that the secular courts she initially pursued her action in had different standards of evidence than the Islamic family court; consequently, she was uncertain of what would be relevant and admissible in evidence.

The court's ruling found that "the intersection of legal systems complicates the ability of victims of domestic violence to navigate laws that should protect them equally. The Islamic framework surrounding sexuality and married relationships provides a crucial backdrop for understanding the difficulties faced by victims of marital rape under the state's authority. It is also important to bear in mind that Islamic legal authority is not monolithic and consists of a range of interpretations that can lead to differing conclusions regarding these issues. Specifically, traditional Islamic legal scholarship has been far more explicit in detailing the contractual nature of the marriage relationship (and the agreements about mutual rights and obligations that flow between spouses), including what some scholars might define as sexual availability for one another. Many Muslim scholars, for example, see the traditional Islamic legal concept of *tamkin* (or 'to make oneself available') as the right of the wife to make herself available for

sexual relations and cite that many jurists have contended that we ought to assume ongoing consent in marriage. Indeed, many contemporary scholars will continue to object to this characterization, arguing that this is a misapplication of shar'iah-based conceptions of consent and prohibition of harm."

The problem of consent in Islamic marriage law presents particular difficulties when considering the notion of marital rape because of the historical and contextual variation in traditional views on consent among legal authorities and schools of thought. Specifically, the notion of consent always follows the contract. The traditional Hanafi School, which is most generally followed by Muslims across the globe, has focused on consent in marriage as contractual, involving a collection of sexual rights and obligations of belonging. Some classical jurists have even specified that once the agreement is to one another, consent is indefinite for the sexual act—all things being equal.

Despite this understanding, many modern Islamic scholars have rejected this interpretation and have argued that consent is ongoing. Consent for future sexual activities could not be obtained in advance. Scholars also cite Qur'an verses and prophetic traditions that emphasise that relationships are based on mutuality and kindness within marriage. The Maliki School of Islamic Jurisprudence, which is prevalent in North and West Africa, has a tradition of being stricter on the issue of marital consent, emphasising both the husband and wife's mutual satisfaction and specifically commenting on the husband's obligation to treat his wife with consideration and kindness. Classic jurists of Maliki Law, such as Ibn Rushd (Averroes), argue that a husband's sexual rights within marriage must always be conditioned by his obligation to respect and dignify his wife. Similarly, classical Maliki jurists have defined forced sexual intercourse in the context of marriage as a violation of Islamic ethical principles. At the same time, simplistic interpretations of consent, in favour of his marital rights, have obscured these more conflicted concerns about women's autonomy.

The Shafi'i School which mainly exists in Southeast Asia and some areas of the Middle East, has generally emphasised consent and prohibited harm in all aspects of marriage, including the sexual side. Alghazali and other classical Shafi'i jurists recognised that sexual relations should take place on the basis of mutual pleasure and consent, and they expressed that the wife has needs, and the husband has an obligation to ensure his wife's pleasure and well-being. Some contemporary scholars have used these interpretations to support their arguments of tolerance toward compulsory sexual intercourse, and that forced sexual intercourse contravenes Islamic principles and should be prohibited, regardless of the marital relationship between the parties. The Hanbali School, the official school of Saudi Arabia,

has traditionally enforced a conservative viewpoint of marital relations, stressing the authority of the husband within the family structure while also offering a similar recognition of the wife's right to kind treatment. Traditional Hanbali jurists such as Ibn Taymiyah claimed that the husband's rights with respect to sexuality must still be exercised with respect to the limits permitted by Islamic law, which include a prohibition of harm toward others.

However, in practice, many of these Islamic legal principles, as embodiments of Islamic moral thinking, have been shaped and changed by the myriad cultural and social aspects of life that do not reflect the complexity of Islamic jurisprudential thought. In recent years, many scholars such as Amina Wadud, Asma Barlas, and Kecia Ali have challenged traditional interpretations that seem to legitimize marital rape. These scholars point to the foundational premise of consent in the Quran and insist that cultural assumptions are based on traditional Islamic explanations, and cannot be found in authentic Islamic principles. They point to verses that emphasise kindness, mutuality, and harm, arguing that there can be no forced sexual intercourse or rape. These scholars point to verses like "And among His signs is that He created for you mates from among themselves, that you may dwell in tranquility with them, and He has put love and mercy between your hearts" (30:21) as the idea that lawful Islamic marriage should embody mutual respect and the idea of consent as opposed to the idea of a man dominating the institution of marriage and a submissive woman.

The issue of sexual autonomy in Islamic marriage is also taken up by contemporary female Islamic scholars, who contend that constructed notions of sexual rights in marriage arise from patriarchal cultural assumptions rather than authentic Islamic principles. Ziba Mir-Hosseini, for example, argues that enforced sexual intercourse is at odds with the Quranic vision of marriage, which encompasses love and mercy. She writes, 'The Quranic ideal of a marriage founded on mutual, consensual love and mercy cannot abide sexual coercion' (Mir-Hosseini, 2003, 3). These scholars contend that in the traditional fiqh, the proliferation of male sexual rights stems from historical, cultural, and social roots rather than authentic Islamic teaching. The evidentiary hurdles of establishing marital rape in Islamic legal systems are particularly acute, given the traditional principles of jurisprudence dictating the need for discrete, tangible forms of proof, witness testimony, and lagging conceptualization of the stigma of false accusation.

Classical Islamic law typically has different minimum standards for the proof of sexual offences. Certain schools require four male witnesses (or eight female witnesses) to establish the crime of Zina (unlawful sexual intercourse). The rule based on the

Quranic verses prohibiting adultery has been extended by some jurists to include and capture all forms of sexual assault, creating barriers to viewing marital rape victimisation where victims must prove their victimisation, in private, without witnesses. The application of these evidentiary standards of proof has incurred enormous injustices in multiple Islamic legal systems, where it is simply impossible for victims of marital rape to traverse the technical requirements needed to proceed with prosecution, despite the proportion of harm suffered. The case of *Maryam v. State* (2016) in Pakistan is an example of a woman experiencing consecutive episodes of sexual violence from her husband, including episodes that rendered her unable to care for herself and caused her to be hospitalised for internal injuries. Despite medical evidence supporting forced penetration (the victim provided hospitalisation documents) and witness testimony from the healthcare providers who treated the victim after each incident, the court determined that the traditional requirement of multiple witnesses could not be satisfied and proceeded to dismiss the case.

The judge commented, "While we have sympathy for the complainant, it is important that we respect the evidentiary obligations under Islamic law in order to minimize false allegations and ensure the rights of the accused are protected. The requirement for multiple witnesses under Islamic law was instigated by the understanding that being falsely accused of sexual misconduct can ruin life socially and personally as well as cause severe criminal consequences. However, this protection has made marital rape nearly impossible to prosecute, as sexual violence typically occurs in private without independent witnesses. For example, in *Fatima, v. State* (2017) in Afghanistan dealt with a situation in which a woman suffered sexual violence from her husband when their young children were present. However, the court found that the children's evidence could not establish the necessary evidentiary requirement given their tender age and relationship to the parties."

The hybridisation of traditional Islamic evidentiary requirements with modern forensic evidence has complicated many Islamic forms of law. For instance, *Aisha v. State* (2018) illustrated the dilemma that has arisen in Iran when faced with a female who had been violated by her husband through sexual violence. The medical records provided evidence of forced penetration and physical trauma, yet the court determined that medical evidence alone was not enough to fulfill the traditional evidentiary requirements, as they stated "[W]hile modern science may provide indicators of physical harm...the case before the court must be established against traditional methods of utilising evidence of people witnesses to maintain the Islamic law as an institution." This method has effectively rendered medical evidence useless in many instances of marital

rape despite its evident probative value. The evidentiary standard of the perpetrator's confession in the context of marital rape is also a problem, as an accused is unlikely to confess to conduct, which they may not even consider a crime. For example, *Khadija v. State* (2019) illustrated this type of case in Sudan, when a husband admitted to forcing sexual intercourse on his wife but argued that it was part of his rights and thus difficult to conclude whether he had even confessed to a crime.

In many cases, the court's judgment agonised over the extent, if any, that admission of coerced sexual intercourse (informed by the absence of consent) in marriage could be seen as a confession in circumstances where the legal system did not characterise the experience as a criminal act. The requirement for this kind of evidence profoundly affected the victims of marital rape. This places women who have developed serious sexual violence in a legal environment in which they do not have access to meaningful justice through the conventional legal system. The psychological trauma of sexual violence is compounded by the formal legal system that refuses to recognize their experience as a criminal act thereby subjecting them to further victimization that is as threatening to their health and well-being as the original act of sexual violence. The case of *Zahra v. State* (2020), Iraq was a victim who accounted for recurrent sexual violence at the hands of the woman's husband and led the court to dismiss the case altogether, stating insufficient evidence. Following its dismissal, this state of stress caused significant damage to survivors' mental health, resulting in an attempt to take her own life.

The social and cultural aspects that dictate how evidentiary requirements are implemented in marital rape cases create another obstacle to justice for victims. In *Amina v. State* (2021), the Moroccan Court, was confronted with the case of a woman who suffered sexual violence from her husband and witnesses against violence that would not testify for social reasons, including family honour. The Court noted: "the private nature of marital relations and wealth of social stigma surrounding sexual violence is an additional layer of difficulty for victims who require the witness testimony, as prescribed by the tradition of Islamic law." The Court further added: "we were bound by the evidentiary requirements... so we had to dismiss the case." The treatment of both Islamic law's evidentiary requirements and contemporary human rights standards can lead to tension in the interaction between the two systems of law, especially because contemporary international law requires states to deliver effective remedies to victims of sexual violence without considering how it may be proven or other evidentiary issues. The case of *Nadia v. State* (2022) in Egypt involved a woman who suffered sexual violence at the hands of her husband; the Court agreed that "contemporary international human rights law requires states to provide effective remedies for

victims of sexual violence," yet "traditional evidentiary requirements set forth in Islamic law create practical hurdles to the prosecution of perpetrators."

The court's final ruling, dismissing the case for a lack of proof, exemplified the continued struggle between the traditional norms of Islamic law and modern human rights standards. The disparity between legal theory and practice in Islamic countries has created a crisis of justice for victims of marital rape, as legal systems desiring to invoke principles for protecting women from harm have been unable to provide applicable protection. The case of *Rania v. State* (2019) out of Jordan, as an example of this culture clash, involved a woman victim of sexual violence from her husband, and the court determined that "Islamic law says a person cannot harm another person or other persons either directly or indirectly. It is well-known that husbands do not harm their wives. A husband's harm to his wife ranges from physical, psychological, to financial harm. However, traditional interpretations have imposed limited practical constraints on the foundational principles of Islamic law; the primacy of a husband allows authority to impose harm on an independent party where the latter is rendered dependent." The court's decision lamented the contradiction of a legal system that prohibited harm, while simultaneously permitting harm from sexual violence involving marriage.

Islamic legal systems have not addressed marital rape, in part, because the socio-political environment in which they exist offers complicated tensions between historical religious authority in legal matters and the force of modernisation. Some nations, such as Lebanon, have caught up in an existential debate on the role of Islamic law in contemporary society. *Layla v. State* (2020) from Lebanon involved a case of a woman who had been sexually assaulted by her husband; the court aptly noted, "the incidental debate regarding the mandatory application of Islamic law has created the right conditions (...) which has compelled Lebanon to act." Further, how *Layla v. State* (2020) was resolved as reflective of the state of paralysis that has afflicted the responses of many Islamic law systems to address gender-based violence. The conflation of Islamic law with invariably secularising legal systems in many Muslim majority nations generally complicates attempts to address marital rape as similar cases will fall to different courts each of which may define differently to some degree.

The *Yasmin v. The state* (2021) case in Indonesia involved a woman who had experienced sexual violence by her husband, and Islamic family courts recognised her right to divorce based on violence, while secular criminal courts argued that marital exemption prevented prosecution. Through this fragmented legal framework, individuals may gain civil remedies while being deprived of criminal justice or

even worse and derive conflicting messages about the extent to which marital rape is a serious social problem. The extent to which international human rights law has had a meaningful impact on Islamic legal regimes has been intermittent and often fraught with tension, with some states willingly adopting international human rights standards in national law and others taking up arms to resist this move as inconsistent with Islamic principles. The *Hala v. The state* case (2022) in Tunisia included a woman who had experienced sexual violence from her husband. The court stated, "Tunisia's commitment to international human rights standards requires that women's rights within marriage must be recognised, including a right to refuse sexual intercourse."

The court's ruling to permit prosecution, notwithstanding traditional interpretations of Islamic law, also demonstrated how Islamic legal systems can respond to current conceptions and standards of human rights. The involvement of civil society organisations and women's rights activists in holding Islamic law systems accountable for their resistance to acknowledging marital rape has proven fruitful in raising awareness and calling for legal change. The case of *Soraya v. the state* apparently arose from a woman who sustained the sexual violence committed by her husband. Some women's rights organisations provided soraya with legal support and advocacy which helped draw international attention to her case. Ultimately, her case was dismissed because of evidentiary issues, but the activism surrounding it contributed to important discussions on the necessity for legal reform.

The economic and social effects of not tackling marital rape in Islamic countries are far beyond individual cases, representing entire communities and societies. Countries that do not protect women from sexually violent marriage practices are likely to experience higher levels of domestic violence, lower women's ability to participate economically, and limited social development. The normalisation of sexual violence in marriage contributes to broader patterns of gender inequality in women's access to education, employment, and participation in political decision making. Pakistani Case of *Leila v. State* (2020) demonstrated that neglecting marital rape leads to violence and inequality, which continue to affect the generation of women. In Leila's case, she was subjected to sexual violence from her husband, and her daughters experienced violence similar to that of their husbands.

The court's dismissal of the case because of evidentiary issues was a clear message that sexual violence in marriage was acceptable and only continued to foster a culture in which rape and other forms of abuse were routinely accepted and perpetuated across generations. The health impacts of marital rape on victims and their families are largely invisible to the legal

system that refuses to treat this conduct as a crime. As seen in *Mariam v. State*, Case no. 844/187, (2021) Syria, a woman endured sexual violence by her husband for years. Mariam suffers from extreme physical and psychological damage that requires ongoing medical treatment. The court dismissing the case meant that the victim could not regain his/her medical expenses or receive any protection from further abuse. In other words, by failing to deal with marital rape, the victim is left with extra economic and social burden. Despite cultural and religious considerations, the international human rights framework is clear regarding a state's obligation to deal with marital rape.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has consistently established that states bear an obligation to prevent, investigate, and punish sexual violence during marriages. In its General Recommendation No. 19, the Committee recognized that "violence against women is a form of discrimination that inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" and has defined and addressed marital rape as "family violence," and warned that "the right to be free from violence is a universal right and does not allow for cultural or religious exceptions." Failure to live up to its international human rights obligations regarding marital rape has not only drawn condemnations from international human rights but has also damaged the international reputations of some Islamic countries. For example, the circumstances in *Nour v. The State of Saudi Arabia* (2022) includes a woman who suffered sexual violence from her husband. The UN Special Rapporteur on Violence Against Women pointed out the lack of legal protection for victims of marital rape in the Kingdom and claimed victimisation.

This case has received international attention and has contributed to the ongoing pressure for legal reform, although there has not been a substantial change. Both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee the right to security of a person and freedom from torture and cruel, inhuman, or degrading treatment, which is nonexistent when governments do not ensure protection against sexual violence during marriage. The case of *Salma v.s. State* (2019) in Yemen brought attention to a woman who had been sexually violated by her husband. Human rights organisations made arguments about the failure or omission of the state to protect itself as a violation of the rule of law and fundamental human rights. In addition, the civil war in Yemen makes it impossible to pursue sexual violence which reinforces the reality that political instability and conflict further complicate the traumatic experiences of the female victims of marital rape. The African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights in Africa (Maputo Protocol) require that the state guarantees that

discrimination against women will be eliminated, and that states will take steps to protect women from violence.

The facts of *Amal v. State* (2020) involved a woman who had experienced sexual violence in her husbands' hands. The African Commission on Human and Peoples' Rights (African Commission) noted that by failing to provide effective legal protection in the case of *Amal*, Morocco was not fulfilling its obligations under the African Charter. Its conclusions contributed to and utilised an existing movement for legal reform in Morocco, although the movement for the reform of legal protections against domestic violence in Moroccan law has remained stagnant, as noted by the Women's Legal and Human Rights Initiative and the Redress Trust. Both the European Convention on Human Rights (European Convention) and the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence require states to criminalise violent sexual conduct during marriage and to provide effective remedies for victims. Turkey's position as a party to the European Convention and the Istanbul Convention created a unique opportunity to advocate legal reform. The case of *Zeynep v. State* (2021) involved a woman subjected to sexual violence by her husband and led to criticism from the European Court of Human Rights (ECtHR). The ECtHR concluded that, by failing to provide effective protection, Turkey acted in violation of the European Convention and became one of the many examples presented to advocate for better legislation. This information continues to fuel debates as to why countries have failed to enact comprehensive legal reforms to prevent family violence.

Moving forward with marital rape in Islamic societies requires a holistic approach that addresses legal reform and cultural change, recognising that meaningful, permanent change should rely on measures that are true to Islamic principles while also satisfying contemporary human rights standards. Changing the law required legal reforms to remove exemptions, excluding marital rape from criminal law. Procedural mechanisms need to be developed to understand the problems associated with prosecuting sexual violence against women. Legal reform will not achieve any real change without a wider cultural change that removes the traditional ideas of gendered roles and prioritises consent and respect for each partner in Islam by consulting with a variety of voices, including those of parties involved in marriage. For countries where changes have been made, include the example in *Hanan v. Jordan's state* (2022), Islamic scholars, and Islamic authorities have been influential in supporting law reform. In that case, the Islamic scholars made the case for sexual violence under the contract involved and what could have been a case of marital rape, and that their conduct was contrary to key Islamic principles of kindness and not causing harm. The case became somewhat infamous in light of the recognition of

scholars who framed their decision not only as a commitment to gender justice but also as an obligation to uphold some Islamic principles. Ultimately, the judge dismissed the proceedings and argued that evidence was insufficient.

The significance of raising education and awareness in shaping attitudes towards marital rape cannot be underestimated. Legal reform will only be part of the solution in which community cultural attitudes accept sexual violence within marriages. The case in point is *Iman v. State* (2020). In this instance, the woman had been subject to sexual violence from her husband, and community leaders and religious authorities had come together to raise community awareness of Islam's prohibition on harm within marriage. Although the court dismissed the case because of marital exemption, the education campaigns surrounding the case led to changes in the community's attitudes. Women's rights organisations and civil society play an important role in advocating for legal reform or supporting marital rape victims, and have been essential in applying pressure for change. *Rabab v. State* (2021) in Lebanon is another good example where women's rights organisations had supported the legal case, had also provided counselling services, and advocated for national attention to the issues surrounding the woman's experience of being subject to sexual violence by her husband. The activism around Rabab has also resulted in ongoing parliamentary discussions and debates about the need to criminalise marital rape.

The international community's contributions, including legal reforms and support for victims of marital rape, played a significant role in creating external change, while respecting national sovereignty and sensitivity. The case of *Widad v. The State* (2022) achieved feminist and women's rights organisations' engagement which was important to the legal changes in Iraq. Widad's case highlighted the matter of marital rape and the issue of sexual violence in the family was brought nearer to international attention. Widad's case arose in the context of broader international dialogue on legal reform in the area of gender violence, including the need to update legislation, laws and policies in line with contemporary society which legitimized arguments against existing legislation. This precedent is seen in the experiences of countries with common law systems (the UK, Canada, Australia) having formerly invalidated conjugal rights in the former matrimonial jurisdiction to advance women's rights, so that they could substantively not just symbolically overcome the institutionalised social norm of marriage, albeit without disregarding the institution of marriage as a valid practice. The experience and process of these country/jurisdictions present a useful pathway for Islamic countries looking to revise their legal frameworks in consideration of social context and cultural legitimacy.

Therefore, there is an urgent need to address marital rape in Islamic countries. Every day, legal structures do not protect women from sexual violence during marriage, which is a day of injustice that affects millions of women. Governments, international partners, local civil society, and legal organisations need to work together to advocate for and promote legal reform that takes women's rights seriously, and acknowledges and upholds that all victims of sexual violence deserve the right to redress, regardless of the relationship between the victim and the perpetrator. The challenge of tackling marital rape in Islamic countries is complex and multi-dimensional. Cultural and religious factors should also be considered. However, compromising women's rights is not an option. However, the requirements of international human rights law and the experiences of other jurisdictions indicate that this challenge can be met if we are committed to justice and have a shared vision of improving women's rights. Not dealing with this issue is not only a violation of women's rights, but it also fails to respect the aspects of justice and equality that are inherent to any secular or religiously oriented legal system.

Marital rape in Islamic societies is a complicated issue that touches on culture, law, and religion, and has historically been overdue for effective and timely action. Protecting women from sexual acts of violence in the context of marriage includes grappling with the intersection of religion, culture, and law, which are often regrettably and ironically rudimentary. Addressing this multifaceted issue requires urgent legislative reform that removes all marital exemptions from rape laws to align national laws with the religious tenants of consent, respect for one another, and harm to non-principles again familiar with Islamic jurisprudence. For this legal change to be meaningful, Islamic nations must also critically examine their existing penal codes, identify and erase all references to marital rape, and then replace the previous content with broadly encompassing definitions of sexual violence and/or nonconsensual sexual acts. Ultimately, this new legal context must emerge in the context of a wider study and cultural practice that operates on two levels: the criminalisation of all ratio or non-consensual acts, but also adhering to core Islamic principles of kindness, justice for all, and dignity for all parties in relationships.

The reformative legislative process should begin by examining extant penal codes in Islamic countries to pinpoint the language that creates exemptions for sexual violence in marriage and to remove that language and replace it with an inclusive language that criminalises all forms of non-consensual sexual activity, regardless of the relationship between the perpetrator and the victim. The statutory codification process must be mindful of the specific language used to define rape and sexual assaults. Nevertheless, inclusionary definitions must be comprehensive enough

to include all forms of sexual violence in a culturally relevant and legally precise manner. Islamic countries should consider how classical Islamic law categorises the crime of sexual violation as coercive zina and where it could at least arguably fall within the rules of Hirabah, and then create contemporary statutory systems that recognise family, including marital rape, as forms of coercive zina and expressly criminalise it.

Aspects of the codification process should begin with a definition of a rape statute that has a clear statutory definition without a marital exemption language. For example, instead of the language defining rape as "sexual intercourse with a woman not his wife", the statute should define rape as "sexual intercourse either against the will of the victim through force, or threats, or the victim is incapable of giving consent as defined by law", which does not mention marital status. This statement reflects the principle that marital rape includes being classified as 'harming the wife', and it is construed in Islamic law as acts of 'prohibiting' because Islam recognises the basic right of the woman to be free from harm. Additionally, this statute clearly states that marriage does not create ongoing consent for sexual activity, consent must be freely given for each sexual encounter, consent can be revoked at any time, and consent does not exist when it is given under conditions of force, threat, coercion, or otherwise. The amendments to the penal code should have detailed provisions which describe the different types of sexual violence within marriage: sexual intercourse involving physical force or violence; sexual intercourse involving threats of immediate harm to the victim, or potential harm to others; sexual intercourse, in which the victim is unable to consent due to mental impairment, intoxication, or unconsciousness; sexual intercourse including fraud or deception; and sexual intercourse which is undermined by economic threats or duress. Each type should be clearly stated with examples to help the judiciary of one jurisdiction interpret and apply the same definition to all jurisdictions. The amendments should also cover attempted rape within marriage, as we recognise that sexual violence can cause traumatic harm to the victim, regardless of whether the act is completed.

Countries such as Bangladesh, which has made notable progress in this regard, can act as models for other Islamic countries, demonstrating how legal reform can be achieved while honouring both Islamic law and culture. The revised law must clearly stipulate that consent is an ongoing process that can never be permanently given, and this can be accomplished using the tenets of the Quran, which holds that marriage is "love and mercy" and not a superior/inferior relationship. This task requires legislators to work closely with Islamic scholars who are able and willing to lend religious legitimacy to legislated changes by demonstrating how the criminalisation of marital rape strengthens the institution of marriage by insisting that it

is based on mutual consent and respect, rather than coercion and violence.

The statutory framework should also contain specific provisions for penalties and sentencing to consider the important distinct lineage of sexual violence within marriage while still giving judges the discretion to consider all particulars of the case. Penalties should be equivalent to those of rape by strangers. The intimate relationship between the perpetrator and victim may even exaggerate rather than attenuate the harm caused by the crime. The legislation should provide some minimum to maximum sentencing guidelines for judges, but should also allow for some consideration of aggravating circumstances, such as the presence of children in the house, the use of a weapon, the infliction of serious bodily harm, or a previous pattern of abuse over time. The sentencing provisions could also clarify the importance of rehabilitation and treatment programs, as it is not only important to punish illegal behaviour but also to prevent illegal behaviour and protect potential future victims through sentencing in the criminal justice system.

The evidentiary framework present in Islamic legal systems poses unique challenges that require careful reform, also based on Islamic jurisprudential parameters but facilitating ways for victims to receive justice. Traditional Islamic law requires evidentiary mandates for some types of cases, although they should be viewed in their proper context and applied in a manner in which it is not impossible to pursue the prosecution of cases of sexual violence. It is important to note that in classical Islamic law, rape was regarded as Zina Al-Zibr or Ightisab; therefore, under the rules of Hirbah, instead of being viewed as consensual zina (adultery), the traditional requirements for multiple witnesses would also be intended to provide safeguards against false accusations in the case of consensual, extramarital sexual relationships, and not an attempt to inhibit the pursuit of prosecution of violent crimes within marriage.

Legislation should create a statutory framework for evidentiary standards by distinguishing between consensual zina and sexual violence which includes three themes regarding the evidentiary standards of these categories of similar offences. The legislation should clarify that the evidentiary standards for sexual violence, including but not limited to marital rape, should not be met to establish the act(s) of sexual violence, but rather to establish the act of non-consensual. The nature of marital rape, which often includes troublesome nuances involving transactional sexual relations between the parties (i.e. the perpetrator and the victim), complies with inadequate evidentiary standards of proof, as these methods incorporate evidentiary standards that are narrow in comparison to the nuances surrounding acts of sexual violence. The penal code should establish clear processes regarding the admissibility of medical

evidence as sufficient evidence of sexual violence, in conjunction with the victim's testimony, noting the Islamic presumption of justice that the legal system must present in every instance of harm and wrongdoing.

The law stipulates that medical evidence of sexual violence can include physical injuries, DNA evidence, and expert opinion evidence on the psychological ramifications of sexual violence, all of which could be useful in showing that sexual activity is nonconsensual. The statutory framework should additionally clarify that a lack of physical injury does not prevent prosecution, particularly given that sexual violence is often inflicted without visible physical evidence in cases where violence is by way of threats, coercion, or psychological manipulation, and not physical violence. The evidentiary provisions should include a mention of the evidentiary considerations associated with documenting sexual violence in the context of marriage, given that victims may still live with their perpetrators, may delay reporting the crime, and may not have immediate access to healthcare. The law should clarify that these circumstances do not, on their face, deduct from the victim's credibility and provide judges with directions on how to assess these evidentiary factors when the victim's conduct may not meet common perceptions of how rape victims ought to behave.

The goal of reforming marital rape laws will require widespread changes in the judiciary, and all begin with exhaustive training for judges, prosecutors, and members of the courts around the legal and cultural aspects of sexual violence in marriage. The training itself must be based on genuine Islamic scholarship to show that uprooting women's sexual violence is consistent with the Islamic principles of justice and human dignity. Judges need some level of education about domestic violence situations and the impact of sexual trauma to help them recognise that victims of marital rape may behave differently from other victims of rape by a stranger. For instance, they may report that years later, they may continue living with the perpetrator rather than pursuing separation or divorce, and may appear inconsistent in their statements/judgments about their experiences, which may not be disingenuous but rather factors of the traumas themselves. The training must emphasise that, while included in marital relations, Islamic marriage is based on consent and respect; wives are not meant to submit to husbands' sexual demands without reference to the harm that may cause them. As articulated in numerous texts, there is clear classical Islamic German scholarship that supports this interpretation of Islamic marriage. We simply need to place this literature in the hands of the judges.

Judicial training programs should be extended to the development of specialised courts or court processes for the processing of domestic violence and sexual assaults, where judges and prosecutors are trained

in handling cases of gender-based violence, with knowledge of the legal and cultural complexities associated with marital rape cases. Specialised case-handling mechanisms should have access to expert witnesses, including health professionals, psychologists, and Islamic scholars (to testify to the nature of sexual violence and its compatibility with Islam). They ought to be able to set up an arrangement where interpretation services are provided for victims who are not native speakers or language users of the dominant language in the justice system, and to accommodate victims with disabilities or special needs. The establishment of specialised courts is a substantial investment in institutional capacity which signals the government's commitment to dealing with marital rape.

The codification process should also consider jurisdictional issues that arise in cases of marital rape. This is especially true in countries with multiple legal systems, or courts with different jurisdictions that address marital rape. Ideally, the law should clarify which courts will have jurisdiction over marital rape cases, how the courts will share evidence, and, specifically, how to avoid having victims living together the evidence through multiple legal processes before achieving justice. Part of the statutory framework should also address the coordination of services among various governmental agencies such as law enforcement, social services, and healthcare to ensure that victims are supported throughout the legal process. Amendments to the penal code should also include specific procedural provisions to address issues related to the prosecution of marital rape cases, including victims cited for domestic violence, evidence preservation, evidence collection, and the challenges faced when a perpetrator may continue to live with the victim.

Legislation should create a clear protocol for law enforcement when responding to a report of marital rape, including training requirements, minimum victim safety procedures, and procedures to ensure that evidence is properly collected and preserved. Legislation should include the role of prosecutors in such cases, including any possibilities for specialised prosecution units, training needs, and lists of the factors that must be taken into account when exercising a discretionary decision to not prosecute when the accused is a spouse. Islamic countries need to participate in international human rights monitoring mechanisms in a meaningful way, seeing it as an opportunity not only to demonstrate progress that curbs marital rape, but also to learn from the experience of countries that have successfully reformed their legal systems. At a minimum, this should include regular reporting to treaty bodies such as the Committee on the Elimination of Discrimination Against Women, cooperation with special rapporteurs and other human rights practitioners, and participation in regional and international discussions on women's rights and gender-based violence.

Addressing international standards should also call for national plans of action to address marital rape as part of a comprehensive approach to eliminating violence against women, which can be supported by specific timelines, resource allocation, and accountability that will contribute to ongoing efforts. Sustained engagement with religious authorities, scholars, and cultural leaders is required to address the religious and cultural aspects of marital rape reform, all of which can lend religious legitimacy to the proposed legal reforms, while also addressing culturally resistant reform. This type of engagement must be informed by genuine Islamic scholarship, which shows that protecting women from sexual violence can acceptably reside within the Islamic norms of marriage and family. Educational work requires educating religious leaders on what constitutes authentic Islamic teachings on consent, kindness in marriage, and non-harm, drawing from classical and contemporary Islamic scholarship that supports women's rights. This educational process must highlight that Islamic marriage is ultimately reliant on mutual consent and respect rather than whole-scale male authority, which is necessary because misconceptions have developed surrounding marital authority, most likely due to cultural practices which are not commensurate with authentic Islamic teachings.

The development of religious education programs aimed at countering misconceptions concerning marital rights and obligations is a critical aspect of sustainable reform that must be rooted in authentic collaboration between religious authorities and legal reformers, so that messaging is both religiously viable and legally sound. No religious education programs will be successful unless they are delivered through mosques, Islamic schools, and other religious institutions that will reach both religious leaders in the community and ordinary members of a community who engage with these institutions. Thus, clear and consistent messaging about the important elements of consent in marriage, as well as the harm created by sexual violence of all kinds, more specifically sexual violence involving the family, partners, and other intimate relationships, can be conveyed. Educational programs will instruct on the intersection between Islamic law and contemporary human rights law by demonstrating how protecting women from sexual violence is, for example, consistent with Islamic values of justice, compassion, and human dignity. Importantly, this religious engagement will also occur concurrently with broader cultural engagement which will involve working with community leaders, women's organisations, and civil society to intervene in the cultural norms that normalise sexual violence in marriage.

The creation of comprehensive victim support services is another significant part of the solution to marital rape, which requires the establishment of culturally relevant services that can address the

immediate needs of survivors, as well as their long-term rehabilitation and recovery. Services should be available to women of various cultural backgrounds and financial, educational, and social resources and should include immediate safety planning for victims who may suffer future violence. Support services should include access to safe housing, emergency medical assistance, and legal protection as well as ongoing counselling and psychological support to address trauma related to sexual violence by an intimate partner. Finally, victim support services need to work in tandem with the legal system to ensure that survivors receive the same level of support, coordination, and information during prosecution so that they understand their rights, the legal process, and what resources are available to them.

Rehabilitation services should mitigate the long-term effects of marital rape on physical health, mental health, and the economic impact of trauma, which may require specialised medical care for physical injuries and ongoing health problems, as well as mental health services related to trauma, depression, anxiety, and other mental health consequences of sexual violence. Economic support (financial assistance) and job training programs would help victims achieve independence and rebuild their lives after leaving a dangerous relationship, which is complicated by a lack of economic independence that leads to economic dependence and limits the possibility of seeking help or leaving a dangerous situation. These integrated support services require substantial investments by states for infrastructure and services from trained professionals. However, such support services are essential to the effectiveness of legal reforms in real protection.

The development of monitoring and evaluation mechanisms is critical to ensure that reforms bring about real changes in the lives of victims, requiring robust data collection systems that monitor reports, prosecution, and conviction rates for marital rape, and outcomes for victims seeking legal remedies. Monitoring should track the implementation of victim advocacy services and support, judicial training initiatives, and the social impact of legal reform. The evaluation mechanism should regularly review legal responses to identify potential areas for reform, such as the effectiveness of different approaches to marital rape cases. The evaluation mechanism should also include conversations with victims, lawyers, civil society organisations, and international human rights experts in order to collect objective assessments and incorporate victims' views into their evaluations, and examine where marital rape intersects with other forms of gender-based violence, with a view to identifying the broader pattern of violence against women that needs to be addressed through reform.

Establishing regional and international cooperation is a key strategy to improve responses to

marital rape in Islamic countries. Opportunities for sharing experience, resources, and good practices are made feasible by regional networks of judges, prosecutors, and legal practitioners who focus on gender-based violence and who can share their concrete experiences of reforming marital rape cases. Regional networks should facilitate the exchange of information on legal reforms, means of successful prosecution, approaches to victim support, mutual support, and technical assistance. International cooperation should include partnerships with countries that successfully improve their marital rape laws and try and learn from experiences to the extent shaped by different cultural and legal contexts. This cooperation includes a technical assistance program that supports expertise in drafting legislation, judicial training, the establishment of victim support services, and the sharing of academic and legal scholarships which could contribute to reform in the future.

The effective and sustainable implementation of marital rape reforms requires long-term investment of resources, spanning more than the initial legislation, and acknowledges that institutional legal change can never truly challenge the deep-seated cultural and social attitudes that underpin violence against women. The plan for implementation should be explicitly informed by ongoing funding commitments to support survivors, judicial education, monitoring, and evaluation, and consistent political support for reforms that will endure government changes and political shifts. Institutional development that sustains momentum over time requires partnerships with those who want to make a difference in communities, such as dedicated units within police forces, prosecutors' offices, and courts that focus on gender-based violence and operate with stable sources of funding, trained personnel, focused mandates, and predictable institutional configurations, to be able to continue to procure justice for survivors of marital rape, irrespective of political and social circumstances.

Ultimately, efforts to combat marital rape in Islamic nations will be successful and properly recognised only when commitment changes from the criminalisation of men to the recognition that protecting women and girls from sexual violence is not simply a legal concern but rather an ethical obligation that aligns with the highest values of Islamic civilisation. Reform efforts should recognise that concepts of justice, compassion, and human dignity transcend cultural and religious boundaries and that protecting vulnerable persons from harm is part of the obligations of all legal frameworks. This multi-faceted approach identifies the foundations for achieving this aim while retaining cultural and religious values central to Islamic contexts, which shows that protecting women's rights can take place congruently with genuine Islamic concepts of justice and human dignity. This approach also acknowledges that real reform is not achievable by a

single commitment and that change must occur in a multiplicity of forms, legislative changes, and the role of the judiciary, promoting strong links with the community and religious sectors, providing victim support services at all levels, and working together internationally to create a holistic response for marital rape to overcome challenges in women's lives and their families.

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Ethical Compliance Statement

The study was conducted with respect to the participants and aimed to comply with the ethical principles applicable to research with human subjects. No formal ethical approval was obtained for this study.

Data Availability Statement

Data supporting the findings of this study are available from the author upon reasonable request.

Disclosure of Potential Conflicts of Interest

The authors declare that they have no conflict of interest. This original and independent study was conducted by the authors.

Author Contributions

The author was responsible for all aspects of the research, including design, data collection, analysis, and writing of the manuscript.

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