

## INTRODUCTION TO CONTINUATION OF SYMPOSIUM ON THE INTERNATIONAL LEGAL OBLIGATION TO CRIMINALIZE MARITAL RAPE

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AJIL Unbound is pleased to publish a second set of contributions to our symposium on the obligation of states under international law to criminalize marital rape. The lead essay by Melanie Randall and Vasanthi Venkatesh, *Criminalizing Sexual Violence against Women in Intimate Relationships: State Obligations Under Human Rights Law*,<sup>1</sup> argues that international law requires the criminalization of sexual violence against women within marriage (and other intimate relationships), and that such criminalization should constitute a central element of the human rights agenda for achieving gender equality. The authors contend that the failure to criminalize sexual violence perpetrated by a husband or other intimate partner violates the rights to life, liberty, autonomy, self-determination, and bodily security and “creates a class of women with lesser legal rights.” According to the authors, international human rights law imposes a due diligence obligation to punish acts of violence against women even when perpetrated by private persons. We earlier published contributions by Robin West of Georgetown Law<sup>2</sup> and Julie Goldscheid of CUNY Law School.<sup>3</sup> We now publish four additional responses, along with a reply by the authors of the lead essay.

Two of the new contributions are largely supportive of the lead authors’ argument. In *If You Buy A Cup, Why Would You Not Use It Marital Rape: The Acceptable Face of Gender Based Violence*, Fareda Banda of the University of London discusses the rationales that have been put forward for tolerating marital rape, offering insights based on legislation and adjudications from Asia, Africa, and the Americas.<sup>4</sup> At the same time, Banda stresses the need for a holistic approach to the problem that tackles structural discrimination and focuses as well on changing attitudes through education and other means. In her contribution, *Marital Rape: The Long Arch of Sexual Violence Against Women & Girls*, Michele Goodwin of UC Irvine discusses the roots of the marital rape exemption and the related doctrine of interspousal immunity and offers insights from Asia and the Americas.<sup>5</sup> She concludes that courts sought to preserve harmonious marital relationships but in fact legitimated terror in American households.

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<sup>1</sup> Melanie Randall & Vasanthi Venkatesh, *Criminalizing Sexual Violence against Women in Intimate Relationships: State Obligations Under Human Rights Law*, 109 AJIL UNBOUND 189 (2015).

<sup>2</sup> Robin West, *Marital Rape, Consent, and Human Rights: Comment on “Criminalizing Sexual Violence against Women in Intimate Relationships”*, 109 AJIL UNBOUND 197 (2015).

<sup>3</sup> Julie Goldscheid, *Considering the Role of the State: Comment on “Criminalizing Sexual Violence against Women in Intimate Relationships”*, 109 AJIL UNBOUND 202 (2015).

<sup>4</sup> Fareda Banda, “*If You Buy a Cup, Why Would You Not Use It?*” *Marital Rape: The Acceptable Face of Gender Based Violence*, 109 AJIL UNBOUND 321 (2016).

<sup>5</sup> Michele Goodwin, *Marital Rape: The Long Arch of Sexual Violence Against Women & Girls*, 109 AJIL UNBOUND 326 (2016).

The other two contributions offer critiques of the strategy of establishing a norm of international law requiring the criminalization of marital rape. In her contribution, *Does International Law Really Require the Criminalization of Marital Rape*, Barbara Stark of Hofstra Law School questions whether the authorities cited in the lead article establish that international law today requires such criminalization.<sup>6</sup> She also argues that such criminalization may not be in the best interests of victims of marital rape in some countries. In *Zero-Tolerance Comes to International Law*, Aya Gruber of the University of Colorado Law School argues that some of the arguments of the lead article prove too much, seemingly requiring criminal punishment for all violence against women and girls, no matter how slight.<sup>7</sup> She also questions the desirability of a carceral approach to this problem as potentially sanctioning illiberal and discriminatory punishment schemes.

The authors of the lead article reply to these critiques in *Why Sexual Assault in Intimate Relationships Must Be Criminalized as Required by International Human Rights Law: A Response to the Symposium Comments*.<sup>8</sup> They argue that removing the marital rape exemption represents more than a “turn” to criminal law. Making criminal (and other) accountability for marital rape available is, in their estimation, more fundamentally a demand for legal equality, autonomy, and basic rights for women—rights that are firmly established in international human rights law.

<sup>6</sup> Barbara Stark, *Does International Law Really Require the Criminalization of Marital Rape?*, 109 AJIL UNBOUND 332 (2016).

<sup>7</sup> Aya Gruber: *Zero-Tolerance Comes to International Law*, 109 AJIL UNBOUND 337 (2016).

<sup>8</sup> Melanie Randall & Vasanthi Venkatesh, *Why Sexual Assault in Intimate Relationships Must Be Criminalized as Required by International Human Rights Law: A Response to the Symposium Comments*, 109 AJIL UNBOUND 342 (2016).