

The news of President Macron's **Law to Strengthen Republican Principles** in Spring of 2021, was received as an opportunity for Femmes For Freedom to place marital captivity on the French political agenda and the public debate. In particular, we focused on the amendment that rigorously tackled violence in the private sphere. This concerned polygamy, virginity certificates, and forced marriages.

We proceeded to contact all relevant French politicians, parties, and included an open letter to President Macron which was published in **Le Monde** asking to put an end to marital captivity and to actively combat it. This became an important step to gain access to the public debate and to raise awareness of this issue, not only to French politicians, but also to the French society.

Throughout the lobbying and advocacy process, we received the news that **Senator Nathalie Delattre** – from the *Groupe du Rassemblement Démocratique et Social Européen* (RDSE) – agreed to take this upon her and table an amendment including marital captivity. The amendment submitted by **Ms. Delattre** was built upon **Dutch legislation** as well as the **recommendations made by Renew Europe**, all results of a longstanding legal and political battle by Femmes For Freedom ([https://www.senat.fr/amendements/2020-2021/455/Amdt\\_230.html](https://www.senat.fr/amendements/2020-2021/455/Amdt_230.html)).

The amendment concerned:

1. A ban on declarations of virginity by doctors for girls and women;
2. Strict enforcement policies against arranged marriages;
3. A rigorous approach to polygamy.

The amendment adds:

4. A ban on the forced continuation of marriage - marital captivity.

Legislating these rights would be a huge step forward for equality for all French civilians, regardless of descent, sex or religion. It would mean that France would become the second country in the world, behind the Netherlands, to criminalize marital captivity.

**On March 30<sup>th</sup>** we received the news that **the amendment** on marital captivity tabled by **Senator Nathalie Delattre** was not passed in the French Senate. Although it had not been added to President Macron's **Law to Strengthen Republican Principles**, we were still very pleased to have placed **marital captivity** - the forced continuation of a marriage against the woman's will – on the French political agenda.

We had brought this matter to the attention of French politicians and the **public debate**, and opened a channel to raise awareness of marital captivity and discuss it further in order to take additional steps towards the recognition of marital captivity as violence against women. **The statement of the Senate was:**

*« Évidemment, cet amendement, tel qu'il est rédigé, ne peut pas être voté, mais il a le mérite d'ouvrir le débat. En droit étranger, le divorce n'a pas les mêmes conséquences qu'en France. C'est une vraie difficulté. Quoi qu'il en soit, je me range à l'avis de la commission. Il y aurait quelque chose à faire, mais c'est compliqué. »*

Translation:

“Obviously, this amendment, as it is written, cannot be voted, but it has the merit of opening the debate. In foreign law, divorce does not have the same consequences as in France. This is a real difficulty. In any case, I agree with the opinion of the committee. There must be something done, but it is complicated.”

## **Most importantly:**

**The debate in the senate** also alluded to important arguments of the opposition that we, Femmes For Freedom, found it important to answer and clarify. These were the arguments of the opposition and our counter-arguments:

- a) *"This amendment would be an excessive infringement of religious freedom. It cannot be compared to section 433-21"*

We strongly disagree with this argument, as it is a common misconception when discussing the marital captivity. It is not an infringement of religious freedom when the practices are a clear aggression, oppression and discrimination towards women and girls. This bill that you are putting forward, tackles the issues of virginity certificates, forced marriages, and polygamy, which are practices that are inspired and justified on religion and culture. Marital captivity is a forced marriage insomuch as it is the forced continuation of a marriage. In other words, how can you combat forced marriages if you don't include marital captivity in this bill? The same women who are forced into marriage are also forced to stay married. The 'loi séparatisme' recognizes and combats the forced entrance to marriage, however, how does it not recognize the forced continuation of a marriage as violence against women?

To obtain a religious divorce in accordance with Islamic rules, men are awarded the unilateral right to end the religious marriage with their spouse. While women are required to ensure the cooperation of the husband in order for their religious marriage to be dissolved. The woman in this situation is the **only** person being oppressed **in the name of religion and culture**.

The right to marry and divorce is a basic human right. Marital captivity represents a clear violation of international treaties that protect human rights and women's rights. This includes the violation of **articles 8 and 12** of the European Convention on Human Rights (**ECHR**), and the non-application of **article 16** of the Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**), and **article 37** of the **Istanbul Convention**. All of them signed and ratified by France.

**Article 17** of the **ECHR** states:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”

In other words, it aims to prevent the misuse of the law, and it's commitment to towards democratic values. By stating that banning marital captivity is an infringement on freedom of religion, you are dismissing, misinterpreting, the duties and obligations stated in the convention.

Humans have rights, religion does not. With these arguments and with these **test cases** we have convinced the Dutch government and parliament, to recognize marital captivity as violence against women. Marital Captivity does not stop in The Netherlands, it also exists in other countries. We women from religious communities demand the French state to listen to us. Similar to the three amendments concerning violence in the private sphere that have been passed in this bill; virginity certificates, forced marriages, and polygamy, **martial captivity should be regarded in the same light and not as a freedom of religion. If the bill combats those three aggressions, it must also combat marital captivity. Because one does not exclude the other. Marital captivity occurs jointly with other harmful practices such as the three you are combatting. Most importantly there is a direct causality with forced marriage and polygamous marriages.**

- b) *"In the French Republic, no woman is forced to stay married since all women can ask a judge for a divorce, even without their husband's agreement. Let's stick to the law."*

In a situation of marital captivity, the woman will be able to be granted a civil divorce without her husband's agreement. However, the woman remains married under religious law and in some cases under family law of the country where the marriage took place. This is often the country of origin of at least one of the marriage partners. This becomes an unsafe and precarious situation .

Suppose that Fatima has married in Pakistan where the civil law is equivalent to religious law. If Fatima marries – against her will or willingly – and returns to France where she resides, she must register her marriage. Her Islamic marriage is then recognized by the country and becomes an official French marriage. She is not happy with her marriage and wants to submit a divorce. For this procedure she goes to French court and receives a civil divorce verdict. This entails a secular divorce due to the fact that Sharia law is not applied. She is stuck in her religious marriage that she does not wish to continue, and for her to receive a divorce in Pakistan her husband must cooperate.

Jasmine is a third generation Iranian woman in France. She wants to marry Ali in Paris and they marry according to French civil law, but if they want to travel back to Iran to see their families they must marry through Islam with a mullah who is recognized by the Iranian Embassy. With that religious marriage certificate they can go to the Iranian embassy and register it. Iran does not recognize secular marriages, one must marry according to Sharia law.

Let's suppose Jasmine wants to divorce. She goes to French court and its granted a civil divorce, but her marriage in Iran still exist since her secular divorce in France is not recognized there. Ali denies her the divorce, leading Fatima to endure marital captivity.

In both cases, under patriarchal religious laws and religion-based family law; divorce is prerogative for men. Jasmine and Fatima are confronted with the religious norms, which are embedded in the family and penal law of such country. This contributes to situations

in which they have to ask official permission from their husband to travel and/or renew their passport, which some will not allow because the male guardianship still exists/ and is embedded in the law of non-EU countries, which has an impact on women from Muslim communities.

Furthermore, if Fatima or Jasmine both enter a new relationship, their former partners which they are still married to, under Pakistani and Iranian law (Islamic/ Sharia law), can file a case against them for adultery or bigamy. This can result in penal prosecution or penalties such as corporal punishment, or honor violence and killings. And do not forget the stigma.

However, their husbands can continue their life with no restrictions or oppression, they are able to marry whoever they want. Due to the fact that family law in their respective countries allows them to have polygamous marriages. If marital captivity is not recognized by France, the state cannot combat polygamy, since one does not exclude the other.

Marital captivity denies the woman's free and full autonomy to live and shape their life according to their own wishes. They are discriminated against, oppressed and they are placed in precarious situations where their lives are put in danger.

Is this what we want Messieurs sénateurs and Mesdames sénatrices? Do we accept that Muslim women are regarded as third class citizens? This debate in the Senate and Parliament is the moment to change this. If you want to combat all this you must recognize marital captivity. No woman should be forced to stay married because men enjoy more rights in religion. We demand equal rights. If religion does not provide us with equal rights, we need the intervention of the Secular State for our human rights.

- c) *“In Judaism, there is a specificity, which is called the ‘get’ and which is a religious divorce. How could we, in the name of the law of the Republic, intervene before a rabbinical court to demand that it pronounce a divorce?”*

Marital captivity does not only occur in Islam, but it is prevalent in different religious traditions, such as, Judaism, Catholicism, and Hinduism. A valid divorce under Jewish rule is obtained when the husband gives their wives a *get*. Just as in Islam, Hinduism and Christianity, if the husband does not cooperate or offer her a *get*, she is forced to stay married against her will and becomes an *agunah*, a chained wife. The husband will be able to continue his life according to his wishes, however, the wife will remain confined and not be able to re-marry.

*Agunah* is the biggest issue in the women's rights movement in Israel. The state of Israel has taken measures to combat this **issue by recognizing marital captivity as a criminal offence.**

We believe that through a holistic approach, that is, through the recognition of marital captivity as violence against women, one empowers women to fight and obtain what they wish. This on the other hand, makes men afraid which results in them not continuing their malicious actions. The act of acknowledging and recognizing becomes a normative instrument that can achieve valuable change in society.

If this is not acknowledged, the oppression of women in the name of religion continues, and the patriarchy endures. There is an urgent need to ban marital captivity, to create

legislation surrounding this since it has a huge impact on women of all religious traditions.

Considering the intention of 'loi séparatisme', Macron's objective, and that France is the European country with the biggest Muslim community, we believe that this is the moment for the French state to contribute to the emancipation and reforms within the Muslim community which is the objective of the values of the Republic. We believe in secularism because there is no oppression in the name of religion, because inequality is always connected to religious norms.

*La République En Marche* we expect an action from you, after all **Renew Europe // Alde** has recognized in the past. Now is the time!

FFF hopes that these steps inspire more member states to place marital captivity at the forefront of their political agenda. The success of FFF in the Netherlands has led to us opening a door in France and so many more member states will follow!

Marital captivity should be recognized throughout the EU as discrimination and violence against women and prohibited and fought in all member states. The EU prides itself on protecting human rights, but will also need to address marital captivity to live up to this claim. France has taken a step in the right direction by opening a channel to discuss this issue.