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# From Marital Immunity to Criminal Liability: A Comparative Institutional and Economic History of Marital Rape Laws in Europe and Their Implications for 21st Century India

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**Abstract**

*For centuries, the idea that a husband could rape his wife was considered legally impossible across much of the world. This paper traces the long journey from that position to one where marital rape is treated as a serious criminal offence, focusing on the legal evolution in Europe and drawing out lessons for India. Using a comparative institutional and economic lens, the paper examines how the marital rape exemption was born, how it survived for so long, and why it eventually collapsed in countries like the United Kingdom, Germany, France, and Sweden. It then applies those lessons to India, where the marital rape exemption still exists under the Bharatiya Nyaya Sanhita, 2023, and where the Supreme Court has been struggling with the question for years without a final answer. The paper argues that India's continued refusal to criminalise marital rape is not just a legal anomaly it is an institutional failure with measurable economic costs. The paper concludes with a call for legislative action grounded in constitutional values, international human rights law, and the practical reality of how law shapes social behaviour.*

**Keywords:** Marital rape, Hale's doctrine, comparative law, European legal history, India, Section 375, sexual autonomy, institutional economics, Bharatiya Nyaya Sanhita

## 1. Introduction

Few legal doctrines have aged as badly as the marital rape exemption. At its core, the doctrine says something simple and deeply troubling: a husband cannot be guilty of raping his wife. For centuries, this idea was not controversial in most legal systems around the world. It was stated plainly in legal texts, repeated by judges, and accepted without much questioning by legislatures. Today, however, the doctrine is recognised as a violation of human dignity, a relic of a property-based conception of marriage, and an obstacle to gender equality.[1] Most European countries dismantled this exemption during the second half of the twentieth century. The United Kingdom abolished it through judicial decision in 1991. Germany followed with legislation in 1997. Sweden, which had already partially addressed the issue, moved toward a fully consent-based rape law by 2018. These changes did not happen overnight. They were the product of feminist activism, judicial courage, and a slow but steady shift in how societies understood marriage, consent, and bodily autonomy.[2] India has not made that journey yet. The Indian Penal Code of 1860, drafted by the British, contained an exception that protected husbands from rape charges. That exception survived the colonial era. It survived independence. It survived the rewriting of criminal law in the form of the Bharatiya Nyaya

Sanhita in 2023.[3] Today, non-consensual sex by a husband with his wife above the age of eighteen is still not legally classified as rape in India. The Supreme Court has been asked to change that, but as of late 2024, the matter remains undecided. This paper asks a straightforward question: what can India learn from the European experience? To answer that, it does three things. First, it traces the historical origins of the marital rape exemption and explains why it persisted for so long. Second, it examines how and why different European countries abolished the exemption, with particular attention to the legal and institutional mechanisms involved. Third, it looks at India's current legal position, the ongoing constitutional debate, and what a genuine reform might require. The argument is not simply that India should copy Europe. Law does not transplant so easily.[4] But the European experience offers useful lessons about how institutional inertia can be overcome, how courts and legislatures can work together or against each other, and what the real costs of inaction look like when measured not just in legal terms but in human and economic ones.

## 2. The Birth of an Exemption: Hale's Doctrine and Its Legal Foundation

The story of the marital rape exemption in Western law begins, almost inconveniently, with a single sentence. In his *History of the Pleas of the Crown*, written in the seventeenth century and published posthumously in 1736, Sir Matthew Hale wrote that "the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract."[5]The remarkable thing about this statement is not what it says, but what it lacks. It cited no authority. It referred to no statute, no prior case, and no legal principle. It was, in the language of legal historians, pure dictum an assertion dressed up as a rule. Yet it became one of the most influential sentences in the history of criminal law. Courts in England, the United States, and across the British Empire repeated it as if it were settled law, never pausing to ask where it came from.

Why did Hale's statement gain such traction? The answer lies in the institutional context of seventeenth-century English law. Marriage at that time was not just a personal relationship. It was a legal institution through which a woman's legal identity was absorbed into her husband's. Under the doctrine of *coverture*, a married woman had no independent legal existence. She could not own property, enter contracts, or sue in her own name. In this framework, a wife's body was not her own. It belonged, in a very real legal sense, to the household unit and the husband was the head of that unit.[6]The marriage contract, under this conception, was a permanent transfer of rights. When a woman married, she was understood to have given irrevocable consent to sex with her husband for the duration of the marriage. This was not seen as harsh. It was seen as the natural and logical consequence of the marriage relationship. The idea that she could withdraw that consent on a particular night, or in particular circumstances, was simply not part of the legal imagination of the time.[7]Hale's statement also fit comfortably into broader social and religious understandings of marriage. The Christian tradition, which dominated European legal thinking for centuries, understood marriage as a union in which spouses owed each other conjugal duties. A wife's refusal to have sex with her husband could even, historically, be grounds for legal action. The idea that forced sex within marriage was a crime would have seemed, to many contemporaries, like a contradiction in terms.[8] This is not to say that no one suffered. Women who were violently assaulted by their husbands did exist, and some of them sought help. But the law offered them little. Courts that did try to address brutal cases sometimes used creative reasoning finding husbands guilty of assault, or using separation agreements to carve out exceptions but the

basic principle remained intact. For over two and a half centuries, Hale's doctrine stood.

## 3. The Institutional Economics of Legal Persistence

Before moving to the European reforms, it is worth pausing to ask a deeper question: why do bad laws persist? The marital rape exemption is a useful case study in what institutional economists call *path dependence* the tendency of institutions to remain locked in a particular configuration even when circumstances change, simply because changing them is costly.[11]Several factors contributed to the persistence of the marital rape exemption across legal systems.[12]**The cost of coordination.** Changing a legal rule requires multiple actors legislators, judges, prosecutors, and the public to move in the same direction at roughly the same time. Even if each actor privately believes the rule is wrong, changing it unilaterally is risky. A legislature that criminalises marital rape without public support may face electoral backlash. A court that reverses the exemption without legislative backing may face claims of judicial overreach. The result is that everyone waits for someone else to move first.

**The visibility problem.** Rape within marriage was, for most of its history, largely invisible. Victims had strong reasons not to report. There was no criminal remedy, so reporting to police was pointless. Social stigma, financial dependence, and fear of retaliation made even private disclosure extremely rare. When a harm is invisible, there is no political constituency demanding its remedy.

**Ideological lock-in.** Legal rules do not exist in isolation. They are embedded in broader ideological frameworks. The marital rape exemption was connected to ideas about the family, about women's roles, and about the purpose of marriage that were themselves deeply entrenched. Attacking the exemption meant, at least implicitly, attacking those broader ideas. This raised the political cost of reform considerably.[9]**Economic dependence.** In societies where women were economically dependent on their husbands, the practical ability to resist sexual coercion was limited regardless of what the law said. Even if marital rape had been criminalised centuries earlier, prosecution rates would likely have remained very low. This created a cynical argument against reform: why criminalise something that will never be prosecuted anyway? The answer, of course, is that the symbolic and normative power of law matters independently of its enforcement rate but this argument took a long time to become politically persuasive.[10]These dynamics explain why the reforms, when they came, often required sustained political mobilisation rather than quiet legislative adjustment.

## 4. Europe's Long Road to Reform

### 4.1 The United Kingdom

The abolition of the marital rape exemption in England and Wales came not through Parliament but through the courts, and not until 1991. The case was *R v R*, decided by the House of Lords. The defendant had been separated from his wife for about a month when he broke into her parents' home and attempted to rape her. He was convicted, appealed, and the appeal reached the highest court in the land.[1xz]The House of Lords upheld the conviction with a judgment that is remarkable for its clarity. Lord Keith of Kinkel wrote that it was “time to declare that a husband can be guilty of raping his wife.” He acknowledged that Hale's statement had been accepted for centuries but argued that it “no longer represented the

position." The legal fiction of a wife's implied and irrevocable consent was, in his words, "quite unacceptable." The judgment grounded its reasoning not in new legislation but in the common law's capacity to evolve with changing social values.

The defendant subsequently challenged his conviction before the European Court of Human Rights, arguing that convicting him for something that was not a crime at the time of the act violated the principle of no punishment without law, expressed in the Latin phrase *nullum crimen sine lege*. In *S.W. v United Kingdom* (1995), the European Court rejected that argument. The Court held that the evolution of the common law through judicial interpretation was foreseeable, and that the criminalisation of marital rape was not a retroactive imposition of criminal liability but a recognition of a right that was already implicit in the legal system. The judgment was significant because it validated the role of courts in updating law to reflect contemporary values without waiting for Parliament.

### 4.2 Germany

Germany's path was different. The German legal system had traditionally been more resistant to treating marital rape as a serious crime, partly because the legal culture placed a strong emphasis on the stability of family life and partly because the criminal law framework required legislative action rather than judicial innovation. For most of the twentieth century, rape within marriage was either not criminalised at all or treated as a minor offence relative to rape by strangers.[14]The decisive change came in 1997, when the German parliament amended the criminal code to explicitly criminalise marital rape and to make it subject to the same penalties as other forms of rape. This followed years of feminist campaigning and significant academic criticism of the existing law. The reform was part of a broader overhaul of German sex offence law that brought it into closer alignment with international human rights standards. Even after 1997, critics pointed out that the law did not automatically produce justice. Research showed that prosecutions for marital rape in Germany remained rare, that victims faced systemic disbelief in the criminal justice system, and that gender stereotypes continued to influence how prosecutors, judges, and juries assessed evidence in cases involving intimate partner violence. This is a crucial point for India: formal criminalisation is necessary but not sufficient. The quality of institutional response matters enormously.

### 4.3 France

France's experience with marital rape reform is interesting because it happened earlier than in many other European countries, and because it was driven as much by feminist politics as by legal doctrine. French feminists in the 1970s launched a sustained campaign not just to change the law but to challenge the entire legal system's approach to sexual violence.

The 1980 reform of French rape law was a landmark. It redefined rape more broadly, removed the requirement for proof of physical force in some circumstances, and established a framework that, at least in principle, was applicable within marriage. Marital rape was not explicitly criminalised until later, but the 1980 law created the legal tools that made prosecution possible. French courts subsequently held that the principles of the new law applied to marital relationships, and explicit statutory recognition followed.

What made France's experience instructive was the feminist movement's understanding that changing the law was just one battle in a longer war. The movement also challenged the institutional culture of courts, police, and hospitals the places where rape survivors actually sought help. They understood that a law is only as good as the system that enforces it.

### 4.4 Sweden

Sweden has become something of a reference point in global debates about rape law because of its 2018 reform, which introduced a fully consent-based definition of rape. Under the new law, sex is rape if it is not based on the active and voluntary participation of both parties. The burden is not on the victim to prove force or threats. The focus is entirely on consent.[15]Sweden had already criminalised marital rape long before 2018. The 2018 reform was the culmination of a longer journey toward making the law more victim-centred. The Swedish experience demonstrates something important: abolishing the marital rape exemption is not the end of the road. It is the beginning. Once you have established that marriage provides no immunity from rape charges, the next question is what *consent* actually means in law and that turns out to be a more complex question than it first appears.

## 5. The Comparative Picture: What the European Experience Teaches Us

Looking across the UK, Germany, France, and Sweden, several patterns emerge that are relevant to the Indian debate.

**The route of reform matters.** In the UK, reform came through the courts. In Germany and France, it came through legislation. Sweden used a combination. Each route has its advantages and risks. Judicial reform is faster but may lack democratic legitimacy. Legislative reform is more durable but can take decades to arrive. For India, where both the courts and Parliament are engaged with the issue, the question of which institution should move first is not merely procedural it has real consequences for the durability and scope of any reform.

**Reform is not the end of the problem.** Every European country that has criminalised marital rape has subsequently discovered that convictions are rare, that institutional bias persists, and that cultural change lags far behind legal change. This does not mean reform is pointless. The symbolic message that law sends is enormously important. But it does mean that legal reform must be accompanied by investment in support services, police training, and changes to how courts handle sexual violence cases.

**International human rights law has been a powerful driver.** The European Convention on Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other international instruments have provided both a normative framework and a practical enforcement mechanism for reform in Europe. India is a party to CEDAW and has repeatedly committed itself to gender equality in international forums. Those commitments create obligations that are not merely political.

**Economic analysis supports criminalisation.** When economists look at laws protecting women from violence, they find that they have positive effects not just on individual victims but on broader social outcomes labour force participation, educational attainment, and health indicators all improve when women feel safer. Laws that perpetuate impunity for violence have the opposite effect. They reduce women's freedom of movement, their willingness to enter the labour market, and their capacity to make autonomous decisions about their own lives. The marital rape exemption is, in this sense, not just a moral problem. It is an economic one.

## 6. India's Legal Position: The Exception That Never Left

The marital rape exemption in India has a colonial origin. When Thomas Macaulay drafted the Indian Penal Code in 1860, he drew heavily on English law, including the Halean doctrine of implied matrimonial consent. Section 375 of the IPC defined rape and contained an exception stating that sexual intercourse by a man with his own wife, provided the wife is above a certain age, does not constitute rape.[17]The age threshold has shifted over time. In 1860, it was ten years. In 1940, it was raised to fifteen. In 2017, the Supreme Court raised it to eighteen in the context of the Protection of Children from Sexual Offences Act, though it specifically said that it was not addressing the question of marital rape involving adult women. The Bharatiya Nyaya Sanhita, 2023, which replaced the IPC, retained Exception 2 to Section 63, which mirrors the old exception under Section 375. The colonial-era exemption, in other words, survived the most comprehensive reform of Indian criminal law in decades.

The constitutional challenge to the exemption has been pending for years. The Delhi High Court gave a split verdict in 2022. Justice Shakdher held that the exception violated Articles 14 and 21 of the Constitution because it discriminated against married women and violated their right to bodily autonomy. Justice Shankar disagreed, holding that the exception had an intelligible differentia and was not unconstitutional. The matter went to the Supreme Court, where it was listed, relisted, and deferred repeatedly. In October 2024, the court deferred the matter once more, with the Chief Justice indicating that a decision could not be rendered before his retirement.

The government's position has been consistent and, to many observers, deeply troubling. The Home Ministry's affidavit before the Supreme Court argued that criminalising marital rape would be “excessively harsh” and would cause “serious disturbances” in the institution of marriage. The government suggested that existing laws the domestic violence framework, provisions on cruelty, and sexual harassment law already protected married women adequately. This argument was directly contested by petitioners, who pointed out that these laws do not address the specific harm of rape and do not carry the same normative weight.[16]The government also argued that consent to sex is “implied” through marriage. This is, almost word for word, the argument that Matthew Hale made in the seventeenth century. It is the argument that the House of Lords rejected in 1991. It is the argument that the European Court of Human Rights found inconsistent with human dignity in 1995. Its continued use by the Indian government in 2024 represents a remarkable degree of legal regression.

## 7. Constitutional Dimensions of the Indian Debate

The constitutional case against the marital rape exemption is, at its heart, a case about three fundamental rights: equality under Article 14, non-discrimination under Article 15, and the right to life and personal liberty under Article 21, which the Supreme Court has interpreted to include bodily autonomy and dignity.

**Article 14** guarantees equality before the law and equal protection of the laws. The marital rape exemption creates a classification that distinguishes between married and unmarried women only the former can be raped by their partner without criminal consequence. For this classification to be constitutionally valid, it must have an intelligible differentia and a rational nexus with the object of the law. Critics argue that there is no rational basis for treating married women as less deserving of protection from sexual violence than unmarried women. The fact of marriage does not reduce the harm of rape. It does not change the nature of the act. It merely changes the identity of the perpetrator. **Article 15** prohibits discrimination on grounds of sex. The marital rape exemption discriminates against women by design it operates exclusively to protect men who rape their wives. A law that confers immunity on one sex for

acts of sexual violence against the other is a textbook case of sex-based discrimination. **Article 21** has been interpreted by the Supreme Court in a series of landmark judgments to include not just physical life and liberty but dignity, autonomy, and privacy. In *Justice K.S. Puttaswamy v Union of India* (2017), a nine-judge bench unanimously held that privacy, which includes bodily integrity and the right to make intimate decisions about one's own body, is a fundamental right. That judgment provides powerful ammunition for the argument that a woman's right to refuse sex including within marriage is constitutionally protected.[18]The government's counter-argument is essentially that marriage itself creates a legitimate state interest in preserving conjugal relationships, and that criminalising marital rape would be an excessive intrusion into that relationship. This argument confuses the institution of marriage with the individual people within it. The constitutional rights of a married woman do not disappear because she has entered a marriage. If anything, the state has a stronger obligation to protect her within an institution that has historically been a site of concentrated power and potential abuse.

## 8. The Economic Cost of the Exemption

Legal scholars often focus on the moral and constitutional dimensions of the marital rape debate, and rightly so. But there is also an economic argument that deserves attention, because it speaks to policymakers who might be more receptive to cost-benefit analysis than to rights-based arguments.

The marital rape exemption imposes real economic costs on Indian society in at least three ways.

**First, it reduces women's labour market participation.** Research consistently shows that women who experience intimate partner violence including sexual violence have lower rates of employment, higher rates of absenteeism, and lower lifetime earnings than women who do not. A legal environment that tells women their sexual autonomy has no value within marriage sends a clear signal about how the state values them as persons. That signal affects not just the women who are directly victimised but all married women, by normalising a relationship of subordination and reinforcing the conditions that make economic dependence more likely.

**Second, it imposes health costs on the healthcare system.** The physical and psychological consequences of marital rape are well-documented. They include physical injuries, unwanted pregnancies, sexually transmitted infections, depression, post-traumatic stress disorder, and a range of other conditions. Many of these require medical attention. In a country with a severely strained public health system, these costs fall partly on the state. A legal framework that removes the deterrent effect of criminal law however imperfect that deterrent may be is a framework that tolerates preventable harm.

**Third, it undermines the legitimacy of the legal system.** Institutions derive much of their value from public trust. A legal system that tells half the population that their right to bodily autonomy is worth less inside marriage than outside it is a legal system that erodes its own moral authority. The long-term cost of that erosion in terms of public faith in the law, willingness to use the legal system, and the normative power of law to shape behaviour is difficult to quantify but very real.

## 9. The Road Not Taken: Why India Has Not Reformed

Understanding why India has not criminalised marital rape requires looking at the same institutional forces that kept the exemption alive in Europe for so long but also at factors specific to the Indian context.

**Political economy of the family.** In many parts of India, the family is the primary unit of social and economic organisation. Marriage is not just a personal relationship but an alliance between families, with significant financial stakes. The idea that a wife could use criminal law against her husband and, by implication, against his family is perceived in some quarters as a threat to social stability. Political parties that depend on conservative religious and community organisations have strong incentives to resist reform.

**Institutional fragmentation.** India's legal system involves multiple actors with different incentives. The legislature has repeatedly declined to address the issue, most recently in 2023 when it passed the BNS without removing the exception. The executive has actively opposed reform in its court filings. The judiciary has taken the issue seriously but has been unable to deliver a final judgment for years. When institutions are fragmented and reform requires coordinated action across all of them, the status quo tends to win.

**Misplaced fears about false complaints.** One argument frequently made against criminalising marital rape is that it would lead to an avalanche of false complaints by wives against husbands as a tool in matrimonial disputes. This argument has been used in other jurisdictions and consistently found to be without empirical basis. Countries that have criminalised marital rape have not seen dramatic increases in false allegations. If anything, the evidence suggests that the fear of not being believed acts as a powerful deterrent against genuine complainants rather than against false ones.

**The colonial legacy in reverse.** There is an irony in the Indian situation that deserves mention. The marital rape exemption was introduced into Indian law by the British colonial government. The UK abolished its own exemption in 1991. But in India, the exemption is sometimes defended in the language of cultural sovereignty as if removing it would be capitulating to foreign or Western values. This is a profound historical inversion. The exemption is not a traditional Indian value. It is a colonial imposition that the coloniser has since repudiated. Defending it in the name of Indian culture is, to put it plainly, a confusion of history.

## 10. International Obligations and Comparative Law

India is a signatory to CEDAW, which the UN Committee has consistently interpreted as requiring states to criminalise all forms of sexual violence, including within marriage. The Beijing Platform for Action, to which India is committed, specifically addresses marital rape as a form of gender-based violence that states are obligated to address. These international commitments are not merely aspirational. They create legal obligations that are enforceable through reporting mechanisms and, increasingly, through domestic courts that interpret constitutional rights in light of international standards. Looking beyond Europe, the global picture is instructive. As of the early 2020s, over 130 countries have explicitly criminalised marital rape. The countries that have not done so include India, along with a number of others in South and Southeast Asia, Africa, and the Middle East. The company India finds itself in is not the company of legal innovators.

Within Asia, some comparisons are revealing. Nepal, often cited as having a more conservative legal tradition than India in certain respects, criminalised marital rape in 2006. Pakistan and Bangladesh have not done so, but they are facing growing legal and civil society pressure. China and Japan have reformed their rape laws in recent years to move toward consent-based definitions, though the situation in both countries remains complex.

The legal systems of countries like Peru, Indonesia, and Thailand which have also engaged with questions of customary rights and the intersection of tradition and modernity have

addressed sexual violence in ways that reflect a stronger commitment to women's autonomy than the current Indian framework. This suggests that the reform is not culturally impossible in contexts that share some features with India's social and legal landscape.

## 11. What Reform Should Look Like

If India were to criminalise marital rape, what would that actually involve? The answer is more complex than simply deleting Exception 2 to Section 63 of the BNS.

**Legislative reform is the necessary starting point.** The deletion of the marital rape exception from criminal law is the foundation. But the law should also define rape in terms that are clearly consent-based rather than force-based, following the model developed in Sweden and recommended by the Justice Verma Committee in 2013. That Committee specifically recommended criminalising marital rape a recommendation that Parliament chose not to adopt.

**Procedural protections must accompany substantive reform.** The Indian legal system has a poor track record of handling rape cases sensitively. Victims face hostile cross-examination, their sexual history is sometimes admitted as evidence despite legal restrictions, and cases move slowly through overburdened courts. Criminalising marital rape without addressing these systemic problems will result in a law that exists on paper but not in practice.

**Support systems are essential.** Women who are being raped by their husbands are, by definition, in an intimate relationship with their abuser. Reporting is enormously difficult. It requires access to information about rights, access to legal aid, access to shelter or alternative accommodation, and often access to economic support. India's existing domestic violence support infrastructure is inadequate in most parts of the country. Reform of rape law must go alongside serious investment in these services.

**Public education cannot be ignored.** The persistence of attitudes that trivialise or excuse marital rape including among police officers, prosecutors, judges, and medical professionals means that a change in the law will only produce results if it is accompanied by sustained public education and professional training. This is a long-term project, but it is not optional.

## 12. The Institutional Argument for Judicial Action

Given that Parliament has refused to act not once, but multiple times, most recently in 2023 the question of whether the Supreme Court can and should strike down the marital rape exception on its own is important and contested.

The precedents from Europe are instructive here. In the UK, the courts acted when Parliament would not, and the result was accepted as legitimate. The European Court of Human Rights endorsed that approach, holding that judicial evolution of the common law to reflect contemporary values is consistent with the principle of legality. In India, the Supreme Court has itself used constitutional interpretation to expand rights in ways that Parliament had not explicitly authorised the *Puttaswamy* judgment on privacy being just one example. The argument against judicial action is that criminalising conduct creating a new offence is the legislature's job, not the court's. This is a serious argument and should not be dismissed. Judicial criminalisation raises due process concerns that legislative criminalisation does not, because it may retroactively expose conduct to criminal penalty in ways that individuals could not have anticipated. A better approach might be for the Supreme Court to hold the exception unconstitutional on equality grounds without itself creating a new offence, leaving Parliament to enact the appropriate criminal provision. This is a more restrained use of judicial power and

would preserve the legislature's role while eliminating the constitutional violation. It would also put political pressure on Parliament to act, in a context where inaction would itself be a choice with visible consequences.

## 13. Conclusion

The history of marital rape law is, at its heart, a history of how legal systems respond to power. For centuries, the law protected men's power within marriage by denying women the ability to resist sexual coercion. The European countries examined in this paper the UK, Germany, France, and Sweden all eventually decided that this protection was incompatible with basic principles of equality and human dignity. They reached that conclusion through different institutional pathways and at different speeds, but the direction of travel was the same.

India is at a crossroads. The constitutional case for abolishing the marital rape exemption is strong. The international obligations are clear. The economic costs of inaction are real. What is missing is institutional will a willingness, on the part of either Parliament or the Supreme Court, to take the politically difficult step of recognising that a married woman's body belongs to her, not to her husband.

The European experience suggests that this step, once taken, is not reversed. No country that has criminalised marital rape has subsequently reinstated the exemption. The fear that criminalisation will destroy the institution of marriage has proven, everywhere it has been tested, to be unfounded. What criminalisation actually does is change the meaning of marriage from a contract of permanent sexual availability to a relationship of two people with equal rights and mutual respect.

That is a change India needs to make. The question is not whether, but when and whether it will be led by a courageous judiciary, a reformed legislature, or the continuing pressure of the women who live under an exemption that treats them as less than full persons in the eyes of the law.

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