
PSYCHOLOGICAL TRAUMA AND LEGAL SILENCING: IMPACT OF NON-CRIMINALIZATION OF MARITAL RAPE ON SURVIVORS' ACCESS TO JUSTICE

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ABSTRACT:

The non-criminalization of marital rape imposes profound psychological trauma on survivors, manifesting as PTSD, depression, and profound helplessness, while enforcing a regime of legal silencing that denies them access to justice. In jurisdictions like India, where marital rape remains exempt under laws such as Exception 2 to Section 375 IPC, exacerbating isolation and self-blame. This legal impunity not only re-traumatizes victims through adversarial judicial processes lacking trauma-informed care but also perpetuates genderbased violence by undermining bodily autonomy and reinforcing patriarchal control within marriage.

Survivors endure long-term mental health consequences, including clinical depression (noted in 7 of 8 studies) and suicidality, compounded by barriers like victim-blaming and inadequate support systems that deter reporting. The absence of criminalization creates a vicious cycle: psychological distress hinders help-seeking, while legal invisibility deepens trauma, leaving women trapped in abusive unions without remedy. Reforms—judicial activism, legislative overhaul, and public awareness—are urgently needed to affirm consent as sacrosanct, ensuring survivors' right to justice and healing.

Keywords: marital rape, psychological trauma, legal silencing, access to justice, non-criminalization.

1. INTRODUCTION

Marital rape represents one of the most pervasive yet obscured forms of gender-based violence, where the intimate bond of marriage is weaponized to perpetrate sexual assault without legal repercussions in many societies. In nations like India, the Exception 2 to Section 375 of the Indian Penal Code explicitly shields husbands from prosecution for nonconsensual sexual acts against their wives,¹ framing marriage as an irrevocable license for sexual access. This legal construct not only normalizes violation within the marital sphere but also inflicts deep psychological wounds on survivors, who grapple with shattered trust, chronic fear, and a pervasive sense of worthlessness. The trauma extends beyond the physical act, embedding itself in the survivor's psyche through repeated betrayal by the very person entrusted with their safety, leading to complex manifestations of post-traumatic stress disorder that disrupt daily functioning and long-term emotional stability. Legal silencing compounds this suffering, as survivors are systematically denied platforms to voice their pain in courts or public discourse, rendering their experiences invisible and illegitimate under the law.²

This invisibility stems from entrenched patriarchal norms that equate wifely duty with unconditional sexual availability, a notion reinforced by colonial-era laws that prioritized family harmony over individual autonomy. Survivors often internalize this silencing, convincing themselves that their suffering does not qualify as "real" rape because it occurs within marriage, which fosters profound self-doubt and emotional paralysis. The psychological toll is multifaceted: acute anxiety morphs into hypervigilance, where even routine interactions evoke dread; depression envelops victims in hopelessness, eroding their capacity for joy or self-care; and dissociation becomes a coping mechanism, fragmenting their sense of self as they mentally detach to endure the abuse. Without criminalization, there is no formal acknowledgment of harm, leaving women in a limbo of unvalidated agony, where societal whispers of "adjustment" or "endurance" further entrench their isolation. This dynamic creates a feedback loop, where unaddressed trauma diminishes the survivor's agency to seek help, perpetuating cycles of abuse across generations.³

The intersection of psychological trauma and legal barriers manifests starkly in survivors'

¹ Indian Penal Code, No. 45 Of 1860, § 375 Exception 2 (India).

² Judith Lewis Herman, *Trauma And Recovery: The Aftermath Of Violence* (Basic Books 2015).

³ Rebecca Campbell, *Emotionally Involved: The Impact Of Rape On Victims*, 17 *J. Interpersonal Violence* 531 (2002).

thwarted access to justice, as non-criminalization strips them of evidentiary leverage and institutional support. Courts, ill-equipped with trauma-informed protocols, subject women to grueling cross-examinations that replay their violation, often dismissing cases on grounds of marital privilege or lack of "corroboration." This adversarial gauntlet re-traumatizes victims, amplifying feelings of shame and powerlessness, while police reluctance to register complaints—viewing marital discord as a "private matter"—erects insurmountable hurdles at the outset. Mental health repercussions intensify under this scrutiny; studies reveal elevated rates of suicidal ideation among such survivors, as the justice system's complicity in their silencing mirrors the perpetrator's control, eroding any remnants of dignity or hope.⁴ In essence, the law's refusal to name marital rape as crime transforms the bedroom into an impunity zone, where psychological devastation festers unchecked, denying survivors the validation essential for healing.

2. CONCEPT OF MARITAL RAPE AND LEGAL RECOGNITION

Marital rape emerges from the deeply ingrained assumption perpetual body, stripping her of the fundamental right to consent within the sanctity of wedlock.⁵ This concept traces its roots to historical doctrines like the 1736 English case of Hale's treatise, which proclaimed that a wife implicitly consents to sexual relations for life upon marriage, a notion exported through colonial laws to countries like India, where it persists as. Such legal framing casts the marital bed as a domain exempt from the principles of autonomy and consent that govern non-marital relationships, allowing non-consensual acts—ranging from forced penetration to coercion through physical restraint or emotional manipulation—to evade criminal sanction. Survivors navigate this conceptual quagmire where their bodily violation is reframed as a domestic dispute, fostering a psychological dissonance that normalizes abuse and erodes their sense of self-worth over time.

Legal recognition, or rather the glaring absence thereof, hinges on this archaic marital exemption, which positions the husband as beyond reproach for acts that would constitute grave crimes outside marriage. In India, despite progressive strides like the 2013 Criminal Law Amendment recognizing stalking and voyeurism,⁶ marital rape remains unaddressed, with parliamentary debates often invoking cultural relativism or fears of family disintegration to

⁴ Judith Lewis Herman, *Trauma And Recovery: The Aftermath Of Violence* (2015).

⁵ Matthew Hale, *Historia Placitorum Coronae: The History Of The Pleas Of The Crown* (1736).

⁶ Criminal Law (Amendment) Act, No. 13 Of 2013 (India).

stall reform. This non-recognition permeates judicial discourse, where judges scrutinize a wife's "provocation" or marital harmony rather than the violation itself, imposing a burden of proof impossible to meet without forensic evidence rarely available in private settings.⁷ The psychological ramifications unfold as survivors internalize this legal blind spot, their trauma dismissed as hyperbolic emotion, deepening feelings of invalidation and entrapment.

Globally, the concept of marital rape has evolved unevenly, with over 150 countries having criminalized it by varying degrees, from full equivalence to stranger rape in places like Sweden since 1965, to qualified exceptions in others based on marriage duration or separation status. In contrast, India's steadfast refusal—despite Supreme Court petitions like the 2022 challenge by the All India Democratic Women's Association—reflects a tension between penal code's discriminatory carve-out, which the Justice Verma Committee in 2013 explicitly recommended repealing yet saw no action.⁸ This legal inertia manifests in survivor testimonies where pleas for recognition meet skepticism, as authorities prioritize preserving the marital unit over addressing the violence within, compelling women to endure repeated assaults under the guise of conjugal rights. Psychologically, this denial of legal personhood intensifies trauma, as the law's complicity echoes the abuser's gaslighting, convincing victims that their pain lacks legitimacy and hindering pathways to mental health recovery.

3. HISTORICAL DEVELOPMENT OF MARITAL RAPE LAWS

The historical roots of marital rape laws stretch back to medieval England, where Sir Matthew Hale's 1736⁹ treatise articulated the infamous doctrine that a wife's consent to marriage constituted irrevocable permission for sexual intercourse throughout the union, effectively merging her legal identity with her husband's under the principle of coverture. This patriarchal framework viewed women as property, devoid of independent agency, and it profoundly shaped colonial legal transplants, a legacy that persists despite India's postindependence constitutional revolution promising equality and dignity. This colonial imprint normalized non-consensual acts within marriage, fostering generations of women conditioned to view such violations as inevitable spousal obligations rather than crimes, which sowed seeds of

⁷ Ratna Kapur, *Gender, Sexual Violence And The Indian Legal System*, 23 *Feminist Legal Stud.* 45 (2015).

⁸ *All India Democratic Women's Ass'n v. Union Of India*, Writ Petition (Civil) No. 284 Of 2022 (India).

⁹ Matthew Hale, *Historia Placitorum Coronae: The History Of The Pleas Of The Crown* (1736).

psychological trauma through enforced submission and silenced resistance.¹⁰

As India's independence movement gained momentum in the early twentieth century, reformist voices occasionally challenged these norms, yet substantive legal shifts remained elusive, with family law reforms like the Hindu Marriage Act of 1955 focusing on divorce grounds without touching rape exemptions.¹¹ The 1970s and 1980s saw nascent feminist advocacy, exemplified by cases like *T. Sareetha versus T. Venkata Subbaiah* in 1983,¹² where the Andhra Pradesh High Court struck down restitution of conjugal rights provisions as violative of personal liberty, hinting at consent's primacy even in marriage. However, the

Supreme Court in *Harvinder Kaur versus Harmander Singh* reversed this in 1984,¹³ upholding such rights to safeguard marital institutions, a stance that echoed Hale's doctrine and perpetuated legal silencing by prioritizing family unity over individual trauma. Survivors in this era endured not just physical coercion but a judicial gaslighting that invalidated their suffering, deepening emotional scars as courts reframed pleas for protection as threats to social order.¹⁴

The 1990s brought incremental pressures through international commitments, with India ratifying obligating states spheres, yet domestic law lagged, as *Sakshi versus Union of India* in 2004 urged broader rape definitions but deferred to Parliament on marital exceptions citing *stare decisis*. The watershed Nirbhaya incident of 2012 galvanized the Justice Verma Committee, which unequivocally recommended criminalizing marital rape for wives over eighteen, decrying the exception as a colonial. Despite this, the 2013 Criminal Law Amendment expanded rape definitions yet retained the exemption,¹⁵ bowing to governmental fears of familial misuse, a decision that left survivors in limbo—psychologically battered by unacknowledged assaults and legally adrift without recourse. Petitions piled up in the Delhi High Court from 2015, culminating in a 2022 split verdict: one judge affirming consent's inviolability, the other clinging to implied marital submission, prolonging the agony of women whose trauma festered amid judicial indecision.¹⁶

¹⁰ Tanika Sarkar, *Women And Law In Colonial India* (2001).

¹¹ Hindu Marriage Act, No. 25 Of 1955 (India).

¹² *T. Sareetha v. T. Venkata Subbaiah*, A.I.R. 1983 A.P. 356 (India).

¹³ *Harvinder Kaur v. Harmander Singh*, A.I.R. 1984 Del. 66 (India).

¹⁴ Nivedita Menon, *Seeing Like A Feminist* (2012).

¹⁵ Criminal Law (Amendment) Act, No. 13 Of 2013 (India).

¹⁶ *RIT Foundation v. Union Of India*, 2022 SCC OnLine Del 1404.

Parliamentary debates through the 2010s and into the 2020s revealed entrenched resistance, with lawmakers invoking cultural ethos and misuse anxieties, offering no penal teeth. Global contrasts underscored India's stagnation—Sweden criminalized marital rape in 1965,¹⁷ the UK in 1991—yet here, successive governments reviewed without reforming, as seen in 2022 affidavits promising deliberation while defending the exception. This protracted stasis amplified survivors' psychological distress, as evolving human rights norms clashed with stagnant laws, forcing women to navigate a historical trap where past doctrines continued to license present violations. Judicial whispers of unconstitutionality, like the 2017 Bombay High Court remark questioning the exception post-Domestic Violence Act, hinted at cracks, but without legislative will, the developmental arc circled back to impunity, entrenching cycles of trauma and silencing that mocked promises of justice. Lower courts mirrored this, routinely quashing complaints as marital discord, re-traumatizing complainants through invasive probes that replayed their ordeals without validation.¹⁸

4. PSYCHOLOGICAL TRAUMA EXPERIENCED BY SURVIVORS

Survivors of marital rape carry an invisible burden that seeps into every corner of their existence, beginning with the shattering of the foundational trust that marriage is supposed to embody, where the person meant to offer protection becomes the source of profound violation.¹⁹ This betrayal identity, triggering immediate responses like acute shock and dissociation, where the mind recoils from the horror by fragmenting awareness, as if floating outside one's own body during the act and long afterward. Over time, this evolves into chronic post-traumatic stress disorder, marked by relentless flashbacks that replay the assault in vivid, sensory detail—the weight of a body, the sting of resistance crushed, the metallic taste of suppressed screams—interrupting sleep, work, and even mundane conversations with paralyzing force. The home, once a sanctuary, transforms into a prison of triggers, where familiar scents, touches, or shadows evoke the trauma anew, fostering hypervigilance that exhausts the nervous system and erodes any semblance of normalcy.²⁰ Unlike stranger assaults, the perpetrator's constant presence amplifies this terror, as escape feels impossible within the shared bed, kitchen, or family routines, binding the survivor to her abuser in a perpetual state

¹⁷ Swedish Penal Code Reform (1965).

¹⁸ Evan Stark, *Coercive Control: How Men Entrap Women In Personal Life* (2007).

¹⁹ Judith Lewis Herman, *Trauma And Recovery: The Aftermath Of Violence—From Domestic Abuse To Political Terror* (2015).

²⁰ David Finkelhor & Kersti Yllo, *License To Rape: Sexual Abuse Of Wives* (1985).

of dread.

Depression envelops these women like a heavy fog, sapping vitality and instilling a deep-seated worthlessness, as the repeated denial of consent reinforces messages of objectification, making them question their very right to bodily sovereignty.²¹ Self-blame festers relentlessly, with thoughts spiraling into convictions that they provoked the violence through inadequacy as a wife, insufficient beauty, or failure to fulfill unspoken duties, a psychological self-laceration that isolates them further from friends or family who might otherwise offer solace. Anxiety disorders manifest in physical tremors, panic attacks that mimic heart failure, and a pervasive sense of impending doom, where even joyful moments fracture under the weight of anticipatory fear about the next assault. Somatic complaints multiply—chronic headaches, gastrointestinal distress, unexplained pains—as the body somatizes emotional agony, seeking expression when words fail under layers of shame.²² Intimacy becomes irrevocably tainted; arousal pathways short-circuit, leading to dyspareunia or aversion to all physical contact, which strains relationships with children or potential allies, compounding loneliness in a cycle where trauma begets relational rupture.

The uniqueness of marital rape's trauma lies in its domestic entrapment, where societal expectations demand endurance for the sake of children, family honor, or economic survival, silencing cries for help and forcing survivors to mask their torment behind facades of marital harmony. This suppression breeds complex grief, mourning not just the assaults but the death of the partnership they once envisioned, laced with guilt over shattered family illusions. Suicidal ideation creeps in stealthily, whispered thoughts of escape through oblivion gaining traction amid unrelenting despair, with statistics shadowed by underreporting yet stark in their implication for lives teetering on the edge. Children unwittingly absorb this pall, witnessing a mother's vacant stare or flinching recoil, which imprints intergenerational patterns of normalized violence or emotional unavailability. Therapeutic access remains elusive, as stigma deters seeking professional aid, and when pursued, counselors untrained in marital dynamics may minimize the harm, echoing legal dismissals that frame it as "conjugal discord," thus re-inflicting invalidation. Over years, untreated trauma warps self-perception, fostering a fragmented psyche where the survivor navigates life as an imposter, her authentic voice

²¹ Lenore E. Walker, *The Battered Woman* (1979).

²² Jacquelyn C. Campbell, Health Consequences Of Intimate Partner Violence, 359 *Lancet* 1331 (2002).

drowned by the roar of endured silence.

5. LEGAL GOVERNING MARITAL RAPE IN INDIA

India's legal framework governing marital rape remains anchored in the colonial-era explicitly carves out an immunity for husbands,²³ provision, a direct inheritance from British jurisprudence steeped in patriarchal notions of marital consent as perpetual and irrevocable, survived the transition to the Bharatiya Nyaya Sanhita in 2023,²⁴ which mirrored the exemption under Section 63 while raising the age threshold to eighteen years in alignment with ruling that invalidated child marriages through sexual assault.²⁵ Courts interpret this exception broadly, often dismissing complaints as non-cognizable domestic matters, forcing survivors to seek circuitous remedies under less severe statutes that fail to capture the gravity of non-consensual penetration. Police stations routinely refuse FIRs, citing the exception, which compels women to endure repeated violations in silence, their psychological distress mounting as legal doors slam shut, reinforcing a sense of utter powerlessness and institutional betrayal that mirrors the abuser's dominance.

Allowing protection orders against sexual abuse within marriage, yet these lack penal rigor, treating forced sex as a breach warranting injunctions rather than imprisonment, which emboldens perpetrators who face no fear of conviction. encompassing mental harassment from sexual coercion, but prosecutions falter on evidentiary hurdles, with courts demanding proof of physical injury or third-party witnesses in private bedrooms, an impossibility that retraumatizes complainants during protracted trials. provides another avenue for nonpenetrative acts, yet its lighter punishment—up to two years—undermines deterrence, leaving survivors cycling through inadequate forums where their full trauma remains unaddressed. Judicial precedents, such as cases, expose fractures: one judge deeming the exception unconstitutional for violating bodily integrity under Article 21, the other upholding it as legislative domain, consigning women to limbo as Supreme Court petitions languish without resolution by 2026.²⁶

²³ Indian Penal Code, No. 45 Of 1860, § 375 Exception 2 (India).

²⁴ Bharatiya Nyaya Sanhita, No. 45 Of 2023, § 63 (India).

²⁵ Independent Thought v. Union Of India, (2017) 10 S.C.C. 800 (India).

²⁶ Justice J.S. Verma Committee, Report Of The Committee On Amendments To Criminal Law (2013).

Government affidavits, including the 2024 Union Home Ministry submission,²⁷ argue against criminalization, positing that labeling marital non-consent as rape would disrupt conjugal expectations and prove excessively harsh, proposing instead enhanced penalties under existing cruelty provisions—a stance that dismisses survivor narratives of profound violation, equating their agony to routine discord. Parliamentary resistance persists, with lawmakers invoking cultural sanctity of marriage and fears of frivolous litigation, stalling bills like the 2019 Muslim Women Protection Bill that skirted the issue amid broader reforms. State-level variations emerge sporadically,²⁸ as Andhra Pradesh courts occasionally invoke unnatural offenses under Section 377 for anal or oral force, but these remain exceptional, inapplicable to penile-vaginal rape, perpetuating selective impunity. Lower judiciary practices amplify silencing: magistrates quash petitions under Section 482 CrPC,²⁹ viewing them as matrimonial disputes amenable to mediation, compelling mediated settlements that trap women in abusive homes without justice, their mental health deteriorating under coerced reconciliation.

Constitutional challenges invoke Articles 14, 15, and 21, alleging discrimination and denial of life with dignity,³⁰ bolstered by the Justice Verma Committee's 2013 call to excise the exception post-Nirbhaya, yet successive amendments ignored it, prioritizing political caution over equity. The 2017 Joseph Shine verdict decriminalizing adultery hinted at evolving consent paradigms, yet marital exemptions endured, with judges citing social fabric concerns in refusals. Survivors navigating this labyrinth face protracted delays—petitions clubbed since 2023 await hearings amid backlogs—each postponement etching deeper psychological scars, as unpunished assaults recur, validating abusers' impunity. Enforcement gaps compound woes: understaffed one-stop centers under the Nirbhaya Fund falter in trauma counseling, while Section 376AB's child wife protections exclude adults,³¹ fragmenting remedies. This statutory mosaic, riddled with exemptions and dilutions, systematically obstructs justice, transforming legal recourse into a gauntlet that revives trauma through invasive cross-examinations probing chastity or provocation, entrenching survivors in cycles of despair where the law, meant to shield, becomes complicit in their silencing. Appellate courts occasionally grant maintenance or divorce under Hindu Marriage Act grounds of cruelty,³² but these civil wins ring hollow

²⁷ Ministry Of Home Affairs, Govt. Of India, Affidavit Before The Supreme Court On Marital Rape Exception (2024).

²⁸ Muslim Women (Protection Of Rights On Marriage) Act, No. 20 Of 2019 (India)

²⁹ Code Of Criminal Procedure, No. 2 Of 1974, § 482 (India).

³⁰ INDIA CONST. arts. 14, 15, 21.

³¹ Ministry Of Women & Child Development, Govt. Of India, Nirbhaya Fund Framework Guidelines (2015).

³² Hindu Marriage Act, No. 25 Of 1955 (India).

against unprosecuted crimes, leaving emotional devastation to fester unchecked amid procedural quagmires.

6. BARRIERS TO JUSTICE FOR SURVIVORS

Survivors confront an impenetrable wall of legal non-recognition from the outset, where renders their complaints non-cognizable, meaning police refuse to register First Information Reports,³³ dismissing assaults as private spousal matters unworthy of investigation. Women arrive at stations trembling, recounting nights of coercion or brute force, only to face officers who lecture on marital duties or suggest counseling, sending them back to the very homes harboring their tormentors, where the cycle of violation resumes unchecked.³⁴ This institutional gatekeeping instills a crushing demoralization, as the state's refusal to document harm erases the survivor's reality, amplifying psychological isolation where pleas for intervention bounce off bureaucratic indifference, deepening the conviction that their suffering merits no official gaze. Without an FIR, chains of evidence never form, chaining women to evidentiary voids that courts later weaponize to discredit them, turning initial barriers into lifelong impediments to validation.

Judicial processes, when grudgingly accessed through private complaints under Section 156(3) CrPC, unfold as harrowing ordeals riddled with skepticism and scrutiny that dissects. Judges steeped in patriarchal norms probe for "provocation," questioning attire, prior conduct, or fidelity, framing non-consent as relational friction rather than violation, which replays the trauma in sterile courtrooms filled with leering relatives or indifferent clerks. Cross-examinations become psychological interrogations, defense lawyers badgering women about bedroom details or resistance levels, forcing reliving of dissociated horrors that trigger panic attacks mid-hearing, yet adjournments drag on for years amid backlog, each delay eroding resolve and finances. Mediation mandates under family courts push coerced settlements, where abusers dangle promises of reform in exchange for silence, trapping survivors in volatile homes without punitive safeguards, their mental fragility fracturing further under pressure to prioritize family facade over personal redress.

Societal stigma erects towering emotional hurdles, as families coerce withdrawal of cases to shield honor, branding complainants as homewreckers who invite community ostracism or

³³ Indian Penal Code, No. 45 Of 1860, § 375 Exception 2 (India).

³⁴ Code Of Criminal Procedure, No. 2 Of 1974, § 154 (India).

economic boycott, particularly in close-knit rural enclaves where whispers of scandal travel faster than justice. Neighbors avert eyes, in-laws unleash vitriol, and children endure taunts at school, weaving a web of shame that convinces women their pursuit harms innocents, prompting abandonment of legal fights amid mounting relational fallout.³⁵ Economic dependence compounds this, with homemakers facing destitution upon separation, lacking skills or assets to sustain independence, rendering court victories pyrrhic as survival trumps vindication. Patriarchal counseling at mahila thanas or NGOs often dilutes urgency, urging adjustment over accountability, mirroring legal leniency and entrenching self-doubt where survivors question if their pain truly warrants upheaval.³⁶

Evidentiary impossibilities loom large in intimate confines, where bruises fade and screams echo unheard, demanding medical reports or witnesses that private nights rarely yield,³⁷ leading to acquittals that vilify the complainant as fabricator. Forensic delays in overstretched labs compound this, while the exception's shadow taints testimony as biased marital spite, courts invoking high sureness thresholds suited for strangers not spouses. Psychological barriers intertwine mercilessly—trauma-induced memory gaps branded as inconsistencies, dissociation misread as fabrication, silencing voices already muted by fear of retaliation, as abusers leverage shared children or property threats to intimidate withdrawal. Corruption seeps in subtly, with bribes smoothing quashed petitions or favorable adjournments, disproportionately burdening marginalized women from lower castes or minorities who navigate additional layers of custodial apathy.³⁸

7. HUMAN RIGHTS PERSPECTIVE ON CRIMINALIZATION OF MARITAL RAPE

From a human rights standpoint, the refusal to criminalize marital rape stands as a glaring violation of women's fundamental right to bodily integrity and autonomy, principles enshrined in international covenants that India has ratified yet selectively implements within its borders. A threshold clearly crossed when non-consensual sexual acts within marriage inflict profound physical and psychological harm, yet evade penal sanction under domestic exceptions that

³⁵ Code Of Criminal Procedure, No. 2 Of 1974, § 156(3) (India).

³⁶ Evan Stark, *Coercive Control: How Men Entrap Women In Personal Life* (2007).

³⁷ Indian Evidence Act, No. 1 Of 1872 (India).

³⁸ Amnesty International, *Rape And Sexual Violence: Human Rights Law And Standards* (2019).

prioritize spousal privilege over personal dignity.³⁹ CEDAW, the Convention on the Elimination of All Forms of Discrimination Against Women, binds states through General Recommendation 19 to prosecute marital rape as gender-based violence, underscoring that marriage confers no blanket immunity from sexual assault, a stance that exposes India's Exception 2 to Section 375 IPC as discriminatory and regressive.⁴⁰ Survivors bear the brunt of this disconnect, their trauma compounded by a legal order that denies them the human right to equal protection under the law, forcing them to endure violations in silence while the state abdicates its duty to safeguard the most intimate spheres of life.

The International Covenant on Civil and Political Rights further illuminates this injustice, with Article 7 prohibiting treatment that impairs physical or mental health, directly implicating the chronic PTSD, depression, and suicidality that mar survivors' lives when justice remains elusive.⁴¹ Human rights bodies like the UN Committee on the Elimination of Discrimination against Women have repeatedly censured India in Concluding Observations since 2014, urging repeal of the marital exemption to align penal laws with obligations under Article 16 of CEDAW, which views marriage as a partnership of equals, not a conduit for dominion. This global scrutiny reveals how non-criminalization perpetuates a hierarchy where married women's consent holds lesser value, silencing their narratives through legal fiction and entrenching psychological wounds that fester without acknowledgment or remedy.⁴² Petitions invoking these treaties in Indian courts highlight the tension, as judges grapple with constitutional morality versus statutory stasis, leaving women trapped in a human rights vacuum where international norms clash against entrenched impunity.

Bodily autonomy emerges as the linchpin of this perspective, affirmed by the UN Special Rapporteur on Violence Against Women, who in reports spanning decades classifies marital rape as torture when systematic, demanding states dismantle exemptions that normalize such violence within the home. The Beijing Platform for Action and Sustainable Development Goals, particularly Target 5.2 on ending violence against women,⁴³ frame criminalization as imperative for gender equality, yet India's resistance—citing cultural specificity—undermines

³⁹ U.N. Comm. On The Elimination Of Discrimination Against Women, General Recommendation No. 19: Violence Against Women (1992).

⁴⁰ Indian Penal Code, No. 45 Of 1860, § 375 Exception 2 (India).

⁴¹ International Covenant On Civil And Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

⁴² Convention On The Elimination Of All Forms Of Discrimination Against Women art. 16, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴³ United Nations, Beijing Declaration And Platform For Action (1995).

its global commitments, rendering survivors' access to justice illusory. Psychologically, this human rights denial manifests as profound invalidation, where the absence of prosecutorial tools strips women of agency, mirroring the abuser's control and deepening emotional paralysis as they confront a world that deems their violation unworthy of redress. Regional instruments like the Protocol to the African Charter on the Rights of Women in Africa, though not binding on India, offer comparative heft, equating marital rape to stranger assault and mandating sanctions, pressuring South Asian states through soft law diffusion.⁴⁴

8. CONCLUSION

The persistent non-criminalization of marital rape in India weaves a tapestry of profound psychological trauma and legal silencing that systematically denies survivors their fundamental access to justice, trapping them in a labyrinth of institutional indifference and societal complicity. From the colonial shadows of Exception 2 to Section 375 IPC, which endures despite constitutional mandates of equality and dignity, women endure not just physical violations but a relentless erosion of selfhood, where betrayal by spouses merges with betrayal by the state to forge unbreakable chains of despair. Acute dissociation gives way to chronic PTSD, depression cloaks daily existence in gray numbness, and suicidal shadows lengthen amid unvalidated agony, all exacerbated by police refusals, judicial skepticism, and familial pressures that recast assaults as conjugal duties unworthy of redress.

Human rights imperatives from CEDAW to Article 21 scream for reform, exposing the marital exemption as a discriminatory relic that shatters bodily autonomy and perpetuates gender hierarchies, yet governmental reticence—cloaked in cultural pretexts—prolongs impunity, allowing abusers to wield marriage as a shield while survivors navigate barriers of stigma, poverty, and procedural quagmires. Historical inertia, from Hale's doctrine to stalled Verma Committee pleas, underscores a developmental failure where global strides toward consent's universality mock India's stagnation, consigning generations to cycles of inherited silence and suffering. The psychological toll ripples outward, fracturing families, imprinting children with normalized violence, and burdening under-resourced mental health systems illequipped for marital trauma's nuances.

Urgent criminalization demands not mere statutory excision but a holistic overhaul:

⁴⁴ Protocol To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa (Maputo Protocol), July 11, 2003.

trauma-informed policing, specialized fast-track courts, robust evidentiary presumptions for nonconsent in matrimony, and integrated counseling under expanded Nirbhaya frameworks to validate survivors' narratives and foster healing. Judicial activism must bridge legislative paralysis, striking the exception as unconstitutional to affirm marriage as partnership, not possession, while public education dismantles myths of wifely submission. Only through such multifaceted transformation can India honor its egalitarian pledges, dismantling the edifice of silencing that today renders marital rape a hidden epidemic, empowering women to reclaim agency, voice their truth, and access justice as a right, not a remote dream. In this reckoning lies not just legal evolution but a reclamation of human dignity, breaking chains of trauma for survivors and society alike.

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