

## 2<sup>nd</sup> ALL INDIA NATIONAL MOOT COURT COMPETITION, 2022

Organised By

INTEGRATED SCHOOL OF LAW, GHAZIABAD

In Association with

SUBHARTI INSTITUTE OF LAW, SUBHARTI UNIVERSITY, MEERUT

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### MOOT PROPOSITION

Payal and Mahesh, aged 25 and 28 respectively. Payal is an upper-middle-class educated woman who fell in love with an office colleague and married him in 2016. They had a happy marriage for a few years, and then began to drift apart. Their lives were consumed by everyday events – children, school, work, sports – which meant they were a typical married couple working on raising a family and living a normal life. Looking for better opportunities in 2017, Payal tried in various competitions and qualified to be Probation Officer in government bank.

Mahesh was an alcoholic who used to have occasional consumption. Due to pandemic reasons he lost his job in 2020. After losing his job, he started drinking excessively. Since Mahesh was not working, firstly he would ask her for money for liquor, and then, if she refused it, he would force himself on her. That was the sequence, every day. He would never pay heed to the feelings of Payal and this was something that hurt her. When Payal tried to talk about this to her mother and mother-in-law, both of them had the same view and stigma that it is the duty of an Indian wife to fulfill the wishes of her husband and sacred bond for at least **seven lives**.

Facing such issues on daily basis, Payal became a patient of depression and met with a counselor Dr. Geeta Nagar. Dr. Nagar has counseled thousands of Indian women. Many of them are rape victims. But there's Payal and Naila, whose story has stuck with her.

That phase of Naila's life ended with her divorce, but 35-year-old Naila will never be healed of what she went through during the nine years of her marriage. Every time her husband approached, it was sheer torture. He never cared about what she wanted or needed. It has taken her years to even be able to talk about this. For the longest time, she was existing in a zombie-like state of mind. Naila tried

to talk to her family about her plight many a times, they thought something was wrong with her. Her family used to make her understand that she have to fulfil his needs. He has a right over her. Besides, her children will suffer.

Dr. Nagar runs **RIT Foundation** which works to promote social and gender equality in India. Despite her advanced degrees in social work and decades of counseling experience, Dr. Nagar felt unhappy. She could help the woman file a domestic violence case against her husband. But she couldn't file rape charges against them . Because marital rape is not illegal in India.

Despite overhaul of India's rape laws following the 2012 Nirbhaya case, a legal loophole remained: Rape that happens within marriage is still not against the law.

*Section 375 of the Indian Penal Code, which prohibits rape, also includes an exception, which reads: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."*

Since Payal's and Naila's case, Nagar has been trying to change that. Her Foundation as petitioner brought a case before Hon'ble Supreme Court through PIL, asking that marital rape be criminalized in India irrespective of personal laws.

Now the case is pending before constitutional bench of Hon'ble Supreme Court for final hearing.