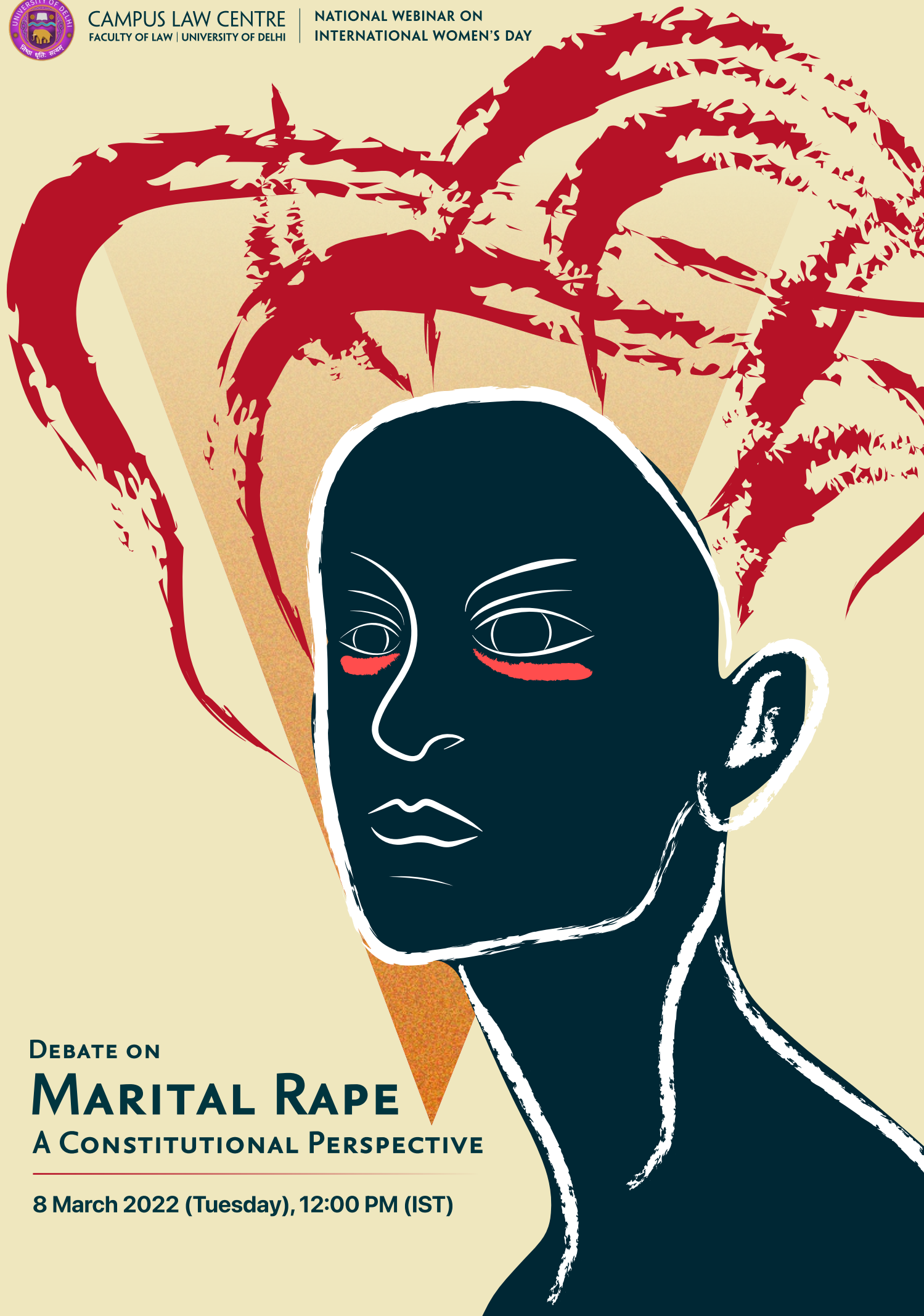




CAMPUS LAW CENTRE
FACULTY OF LAW | UNIVERSITY OF DELHI

NATIONAL WEBINAR ON
INTERNATIONAL WOMEN'S DAY



DEBATE ON
MARITAL RAPE
A CONSTITUTIONAL PERSPECTIVE

8 March 2022 (Tuesday), 12:00 PM (IST)

DEBATE ON MARITAL RAPE: A CONSTITUTIONAL PERSPECTIVE

THE ISSUE OF MARITAL RAPE in contemporary Indian society has been a topic of intense debate and controversy. This sexual offence against the spouse is more widespread than many realize, but it is yet to be recognized as a separate offence under Section 375 of the Indian Penal Code, 1860. Law enforcement and judicial authorities are also reluctant to take cognizance of sexual assaults against the spouse since the accused is nobody but the life partner of the victim. It is also a challenging task to investigate, prosecute and launch a judicial trial in spousal rape cases. The penal proposition concerning rape law significantly exempts sexual offense between spouses. The debate regarding marital rape resurfaced when many women approached the courts to seek remedy against brutal sexual treatment in their matrimonial home and family life. Section 375 of the Indian Penal Code, 1860 says that sexual acts by a man on a woman against her free will or consent would constitute rape. However, there are two exceptions to this. The first exception says that “a medical procedure or intervention shall not constitute rape”. As per the second exception, “sexual intercourse or sexual acts by a man with his wife” when the wife is above 18 years of age would not constitute rape. It is this provision that is being constitutionally tested. While marital rape is not a criminal act in India, a woman could file a case under the Protection of Women from Domestic Violence Act, 2005 or under the provision of cruelty under the Indian Penal Code and could claim separation or divorce or seek punishment against the husband.

A particular section of Indian society, especially women activists wants the exemption provided in Section 375 to be struck down due to its unconstitutional nature. Further, the exemption of Section 375 also violates the right to equality, right to life, dignity, and self-esteem of women as guaranteed under the Constitution of India. Those who strongly advocate the seriousness of marital rape and believe that it should be a punishable offence also highlight some anomalies in the law relating to cruelty where battering, physical, and psychological torture against the wife is a criminal offense, but not raping her. In numerous judicial pronouncements, forced

sexual relations between the spouses is a factor of divorce and punishment, but this area has been completely ignored by the protagonists. Acknowledging marital rape as a separate offense on the lines of Section 375 may also cause serious repercussions for the family; for instance—who will look after the children if the husband is imprisoned? what will be the status of the woman after the conviction of her husband? whether she will go for divorce or maintenance? Some legitimate concerns of the ruining of Indian family values, culture, and future of the children can't be ruled out as has been evidenced in the past with the heavy misuse of Section 498A of the Indian Penal Code, 1860. The Ministry of Women and Child Development has indicated that marital rape is a serious issue and it should be addressed as per the Indian legal standards. If marital rape is declared as a separate offence under the law, the children will be the main victims of such laws. Moreover, if a wife is subject to sexual cruelty, then a civil remedy of divorce is available with her, and since cruelty is already a criminal offence, what is the need to bring in an extra category of offence at a time when people are already distancing themselves from marriages. Apart from that, many unanswered questions are also lining up about the socio-economic protection of the wife, children, parents, and other dependents of the husband. The issue of bodily autonomy and right to personal liberty also arises when we discuss Article 21 of the Constitution with respect to married women. Further, in 2018, while decriminalizing adultery, the Court held that even marital relations are not exempted from constitutional scrutiny.

The primary objective of the webinar will be to discuss and explore avenues for addressing the marital rape conundrum and the challenges ahead if the law is enacted. Major focus will encompass the analysis of the possible consequences of the Court's suggestions and their impact on Indian families, where history, law, and traditions will be our guiding forces.



PROF. (DR.) ALKA CHAWLA

PATRON AND PROFESSOR-IN-CHARGE
CAMPUS LAW CENTRE

WELCOME ADDRESS

Prof. Alka Chawla teaches Intellectual Property Law, Administrative Law and Jurisprudence and is an authority on IPRs in India and abroad. She holds a Ph.D. in Copyright Law from the University of Delhi. She has twice figured in the 'Top hundred powerful women in Law' list by the World IP Forum. She has been nominated as the 'National expert on Intellectual Property' by the European Trade and Business Council; Mentor to the Intellectual Property Protection Organisation; Advisor to National IP Organisation and Member, Education Committee, FICCI. She has authored two books on Copyright Law published by Macmillan and Lexis Nexis and has articles and

research papers in reputed journals. She is the author of the 'Report on Counterfeiting and Piracy in India' (OECD, Europe). She has delivered lectures at various national/foreign universities and various Judicial, Police and Custom Academies throughout the country. She has been a resource person for seminars, workshops and courses conducted by the WIPO, USPTO, UGC, etc.



PROF. BHARTI KUMAR

PROFESSOR IN LAW
NATIONAL LAW UNIVERSITY, DELHI

TOPIC > UNDERSTANDING THE ISSUE OF MARITAL RAPE THROUGH HUMAN RIGHTS PERSPECTIVES

Dr. Bharti is a Professor of Law at NLU, Delhi. She joined NLUD in 2009. She has a long experience of teaching law since 1998. She has been a student of University of Delhi and has taught at the Faculty of Law, Law Center-I and Law Center-II, University of Delhi (DU), before 2009 except for a brief stint at Amity Law School for six months. She has been Visiting Faculty at The Indian Law Institute, Institute of Constitutional and Parliamentary Studies, Bureau of Parliamentary Studies and Training, etc. She has published several Articles and made Paper Presentations on various topics of law. She has

coordinated several Workshops and Seminars at DU and NLUD. She is involved as Faculty Coordinator for legal aid activities at NLUD. She has taught across a wide range of subjects. Her areas of interest are Constitutional Law, Environmental Law, Family Law, and Criminology. She has done her Ph.D. in Alternate Dispute Resolution with emphasis on Lok Adalats in Delhi.

THE PANEL



DR. NARENDER NAGARWAL

MODERATOR AND SPEAKER
ASSISTANT PROFESSOR, CAMPUS LAW CENTRE

TOPIC > MARITAL RAPE IN INDIA: A BATTLE FOR JUSTICE

Dr. Narender Nagarwal currently teaches law at Campus Law Centre and is known for his extensive work on Constitutional Law, Minorities Law and Human Rights in India. Besides having a Ph.D. in Constitutional Law, his work in critical areas of secularism studies, strategic area studies and certain issues of India's foreign policy has been influential. His other areas of interests include peace and conflict studies, Indo-Pak relations, South Asia and Middle East studies. He began his academic life from University of North Bengal, Darjeeling (West Bengal) and has also served in Pondicherry Central University, Puducherry. He has lectured at scores of universities and

law schools in India on various issues of Constitutional Law, Minorities Law and Police Reforms. He has also authored many research papers and book chapters, and his work has opened up new areas of research on conceptions of Minorities Law in India and South Asia. He is also a member of editorial boards of leading publications and journals in India and abroad.



DR. VANDANA MAHALWAR

WEBINAR DIRECTOR
ASSISTANT PROFESSOR, CAMPUS LAW CENTRE

VOTE OF THANKS

Dr. Vandana Mahalwar is currently an Assistant Professor (Sr. Scale) at the Campus Law Centre, Faculty of Law, University of Delhi, and has been teaching Intellectual Property Laws, Administrative Law and Comparative Public Law. Prior to joining University of Delhi, she was an Assistant Professor at The Indian Law Institute, New Delhi, where she taught and researched on Intellectual Property laws. She holds a B.A. LL.B. (Gold Medal) and LL.M. (Gold Medal) from Maharshi Dayanand University, Rohtak, India. Holding a doctorate in Intellectual Property laws from National Law University Delhi, her research primarily focuses on issues pertaining to Access to

Knowledge, Right of Publicity, Character Merchandising, vis-à-vis IP Laws. She has been a Fulbright Postdoctoral Fellow in 2019-2020 at Duke Law School, U.S.A, where she worked on "Access to Knowledge Under International Copyright Law". Dr. Mahalwar has edited a book titled "Copyright Law in the Digital World: Challenges and Opportunities", Springer Singapore, March 2017. She has been a speaker on intellectual property issues on different occasions at prestigious universities including William S. Boyd School of Law, University of Nevada, Las Vegas and Miami Dade College – The School of Justice.

REGISTRATION

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Upon successful submission of your details, join the **WHATSAPP** Group through the link provided in the **GOOGLE** Form.

JOINING THE WEBINAR

The webinar shall be held on the **Zoom** Platform. The meeting link for joining the webinar and the livestream shall be posted in the respective **WHATSAPP** groups.

The webinar and its livestream shall commence at 12:00 PM (IST) on 8 March 2022.

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