

WEBINAR ON: USE OF LAW FOR SAFEGUARDING VIOLATIONS ON HUMAN RIGHTS IN INDIA

DATE: 5th JUNE, 2021

TIME: 10:00 A.M. – 1:00 P.M.

Reporting by: Komal Agrawal
Edited by: Venkatesh Kodukula

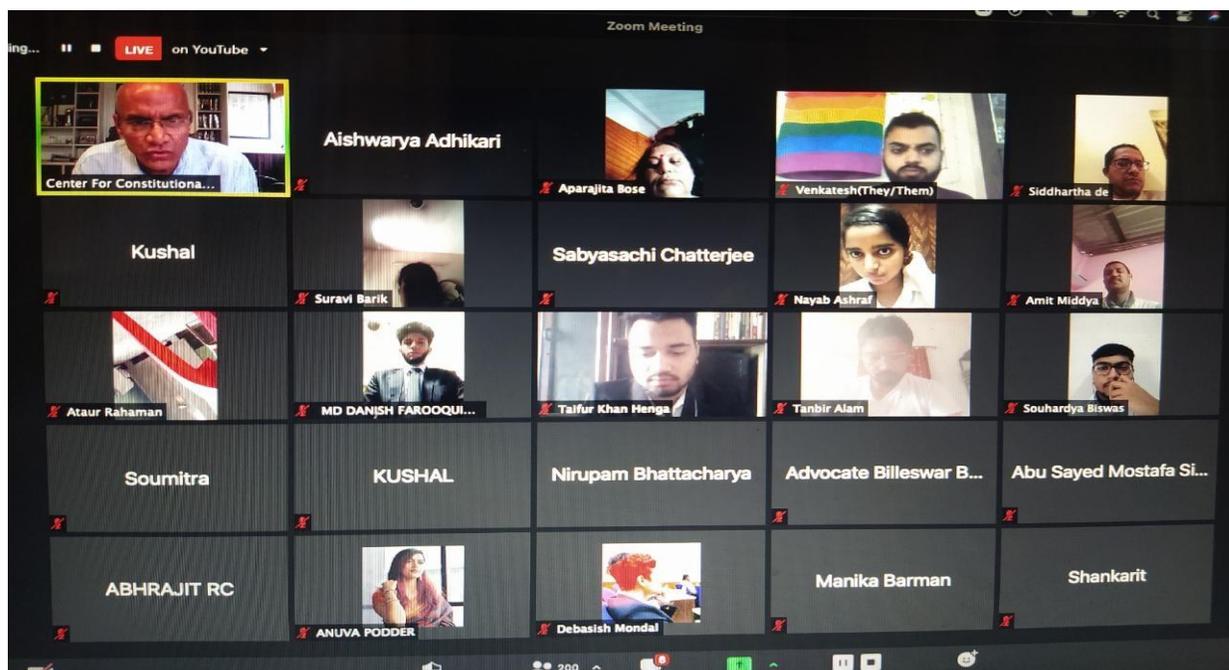


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SCHEDULE FOR THE WEBINAR

Sr. No.	Time	Session	Speaker
1.	10:00-10:05	Welcome Note	Aparajita Bose, HRLN Kolkata
2.	10:05- 10:40	Law of Sedition in India	Colin Gonsalves, Senior Advocate, Supreme Court
3.	10:40-10:50	Victimization of the Human Rights Defenders in India	Sabyasachi Chatterjee, Advocate, Calcutta High Court
4.	10:50-11:30	Challenges faced by Human Rights Defenders during COVID-19 pandemic	Ujjaini Chatterjee, Advocate, Calcutta High Court
5.	11:30 – 12:00	Judicial Activism in India	Dr. Somnath Roy, State Aided College Teacher, Category 1, Government of West Bengal of JCC Law College
6.	12:00-12:20	Judicial Proceedings of the PILs	Arka K. Nag, Advocate, Calcutta High Court
7.	12:20- 12:40	Freedom of Speech	Anirban Guhathakurta, Advocate, Calcutta High Court
8.	12:40-12:55	Right to Privacy in India	Neil Basu, Advocate, Calcutta High Court
9.	12:55-1:00	Discussion followed by Vote of thanks	

INTRODUCTION

Human Rights are rights of all and for all human beings alike and have been globally recognized. The human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination. Human Rights Day is observed every year on 10 December.

The freedom of speech and expression, right to privacy, freedom of press and the rights of individuals to voice their opinions without stepping on the rights of another, is granted by the Constitution and protected by the courts to ensure a dignified and free life to all.

In the webinar, senior legal practitioners and research professors have enlightened the participants with their knowledge and experience and covered different and important facets of law for safeguarding human rights in India.

SPEAKERS SESSION

Aparajita Bose of HRLN Kolkata introduced the topic of human rights and stated a brief description of the work undertaken by HRLN for providing free legal aid to those who do not have access to or are deprived of assistance and includes acid survivors, prisoners, marginalised community, etc. She welcomed the students of Jogesh Chandra Chaudhuri Law College and all the lawyers, activists and participants of the webinar.

SPEAKER 1: COLIN GONSALVES

Mr. Colin Gonsalves is a Senior Advocate at the Supreme Court of India and is the founder of HRLN. He commenced the webinar with the session on law of sedition in India. Section 124A of the Indian Penal Code, 1860 (“**IPC**”) defines and provides the punishment for sedition. In India, the media and press generally have a more favoured space in society when it comes to freedom of speech. However, that latitude does not extend to the general public and students. The IPC is the Bible for the police officers.

Some of the main features of the provision of Section 124A are:

- (a) mere words are punishable;
- (b) representations - placard, posters are punishable;
- (c) hatred, contempt for the government is punished;
- (d) even words of disaffection can bring punishment.

The roots of Section 124A is in the British law, wherein if anything is said against the emperor, then it shall be punishable. Thus, it is unusual for the same to be present in a democratic country since this law was meant to curb any dissent against the Crown and the colonial government. There is not much difference between the activities of the British police and Indian police.

He discussed the provisions of the law in detail and then proceeded to say how its wide ambit and ambiguous language has been taken advantage of in order to arbitrarily charge mostly

journalists and protestors with sedition. In *Kedar Nath Singh vs. State of Bihar* [reported in (1962) SCR Supp.2 (769)], the Hon'ble Supreme Court read down the law of Section 124A and inter alia held that it would be attracted to acts: (a) involving intention or tendency to create disorder, or (b) disturbance of law and order; or (c) incitement to violence. However, no policeman keeps the aforesaid judgment of the apex court in *Kedar Nath* case, along with the IPC.

The speaker also discussed some other landmark judgments like *Balwant Singh vs. State of Punjab* [reported in (1995) 3 SCC 214] where secessionist remarks pertaining to the Khalistan movement were not punished due to the lack of violence involved. In *Bilal Ahmed Kaloo vs. State of Andhra Pradesh* [reported in (1995) 1 SCR 411] a Kashmiri youth on the streets chanted 'Azaadi' and gave a call for arms, yet the Supreme Court did not charge the youth under Section 124A for sedition. The law is obsolete and must change with the efflux of time. Section 124A is only to terrorize, subjugate and torture the people just as the British did.

Further, in *Kartar Singh vs. State of Punjab* [reported in 1994 SCC (3) 569], the Court ruled that any criminal statute that is vague and ambiguous in nature giving leeway to different interpretations should be repealed and this provides a strong case for repealing the colonial era sedition law. Several statutes such as the UAPA 1967, National Security Act 1980, Public Safety Act 1978, have been formulated to deal with the seditious and terrorist activities against India.

Mr. Gonsalves encouraged and called upon the students and all the participants to become social reformers as India is in turmoil and one must rise and revolt against the tyranny at all levels.

SPEAKER 2: SABYASACHI CHATTERJEE

Sabyasachi Chatterjee, Advocate, High Court at Calcutta, has been associated with HRLN and worked on several matters. The speaker briefly covered the topic of defending human rights. The basic human rights are essential to live. The basic elements of Indian democracy are diversity and tolerance. JNU had raised slogans for 'Azaadi' and against 'intolerance'. The intolerance targets the victims and the defenders of the human rights as well. In the Bhima Koregaon case, even the lawyer associated was dragged into litigation. Advocate Sudha Bharadwaj is a human rights lawyer and was arrested by the police in connection with the Bhima Koregaon matter, and has been facing severe hardships.

Article 22 of the Constitution of India provides that every person has a fundamental right to be produced before court and be represented. Article 39A also provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. The defenders of human rights may be activists, lawyers etc.

SPEAKER 3: UJJAINI CHATTERJEE

Ujjaini Chatterjee, is an advocate practicing in the High Court at Calcutta and has previously been closely associated with HRLN. The speaker spoke on the facet of human rights defenders. On 9th December 1998, the world recognised human rights defenders. Lawyers and law students are more aware that protection of human rights is required. Laymen are not even aware that there is a community needing protection, or of the laws and policies. Sensitivity is largely missing in the society.

The entire focus has shifted post the advent of covid-19. The implementation of pre existing law for safeguard of human rights has become even more difficult. The administration and executive have always been non helpful and the human rights defenders face the heat. However, the challenges have increased with the pandemic, and the priority shifting to handling the pandemic. The issue arises since it is the problem of human rights violation of one person versus the pandemic faced by the society at large. Even the defenders have to deal with the pandemic and are scared of going out and helping. The human rights commissions have issued advisories recognizing that there are several issues prevalent despite the pandemic, such as human trafficking, domestic violence etc. The victims have no resort or respite. The access to law and justice has become restricted and there has been a complete breakdown of court functioning.

The speaker discussed how cases of domestic violence, mental health issues have increased during the pandemic and how the two are quite interlinked thus the invisible mental health pandemic has to be dealt with as well in order to deal with these correlated issues.

SPEAKER 4: DR. SOMNATH ROY

Dr. Somnath Roy is a State Aided College Teacher, Category 1, Government of West Bengal of JCC Law College. In the webinar, Sir spoke on judicial activism and the importance of an impartial and independent judiciary in a federal structure. Judicial review forms a basic feature of the Constitution of India. India has a democratic structure and protection of rights of citizens is essential. The judiciary being the final guarantor and protector of the citizens, plays a pivotal role for protecting rights of all the citizens of the country.

The Preamble of the Constitution includes 'JUSTICE' and is for all and in all its form and not just any one class/religion. There are certain provisions for no discrimination on the basis of social or economic background of people. Article 21 of the Constitution guarantees right to life and personal liberty to all and the judiciary has expanded the meaning and ambit by judiciously interpreting Article 21 to include several rights and liberties.

In *Francis Coralie vs. Administrator, Union Territory of Delhi* [reported in AIR 1981 SC 746] the apex court held that the right to life under Article 21 does not mean mere animal existence and includes right to live with human dignity. In *Olga Tellis vs. Bombay Municipal Corporation* [reported in AIR 1986 SC 180], the Supreme Court interpreted the right to livelihood within the right to life. In *PUCL vs. Union of India* [reported in AIR 1982 SC 1473], the right to food was also included in the meaning of right to life. In *Mohini Jain and Unnikrishnan* case, right to education was included within the Article 21. In *Sunil Batra vs. Delhi Administration* [reported in (1978) 4 SCC 409], the court recognized the custodial violence and directed that no cruel or inhumane treatment be met out when in custody or jail.

In *DK Basu vs. State of West Bengal* [reported in AIR 1997 SC 610], the apex court laid down specific guidelines required to be followed for making arrests. The speaker discussed the landmark case of *Hussainra Khatoon vs. Home Secretary, State of Bihar* [reported in AIR 1979 SC 1819] where free legal aid and right to speedy trial was assured by the Court under the Article 21.

The speaker discussed the principle of ensuring that development doesn't come at the cost of environmental conservation and does not disrupt resources for the future generations which has

been recognized in various judgments. In MC Mehta case, the right to live in an environment free of pollution was recognized within the ambit of Article 21.

The speaker also discussed the creativity part of judicial activism for instance Public Interest Litigation. Under Article 32, not only writ remedies but also other directives can be given like compensatory justice. In this context, the speaker referred to the case of *Chairman, Railway Board vs. Chandrima Das* [reported in AIR 2000 SC 997], *Rudal Shah vs. State of Bihar* [reported in (1983) 4 SCC 141] and *Nilabati Behera vs. State of Orissa* [reported in (1993) 2 SCC 746].

SPEAKER 5: ARKA K. NAG

Arka Kumar Nag is an advocate practicing at the High Court at Calcutta, and graced the webinar with points on judicial proceedings of a public interest litigation. The speaker discussed the requirements for a PIL to be accepted by the Courts or the points of maintainability that are scrutinized within the PIL in order for the petition to be discussed in Court. There must be no personal interest or gain/profit to the petitioner. The petitioner must undertake thorough research and background evaluation before filing the petition.

The speaker stated that a judge is a judge everywhere. In this context he shared that a prior Chief Justice of the Calcutta High Court had on a trip to north Bengal, faced bad roads and upon his return, took up the issue. The judiciary must interfere in anything and everywhere it deems fit and justified. If the judges themselves do not take the concept of PIL at the highest level, then the rules and law of PIL shall not shine.

SPEAKER 6: ANIRBAN GUHATHAKURTA

Anirban Guhathakurta is an advocate practicing in the High Court at Calcutta, and spoke on the topic of freedom of speech in India. The right to freedom of speech and expression is provided under the fundamental rights of the Constitution of India. The speaker told that right is something we can claim from the authority. The right to freedom is stipulated under Article 19 of the Constitution and there are restrictions created under Article 19 (2) on the freedom.

In India, the freedom of speech and expression of the press and the citizens has been amply dealt with by the High Courts and the Supreme Court. In a case where the Supreme Court was faced with the issue whether a person has right to conduct interview, it held that if the subject / person being interviewed gives consent then it would be freedom of speech. Even the right to be silent is within the ambit of the right to freedom of speech and expression. The restrictions have been created to keep a close watch and vigil to ensure that no boundaries are crossed and the sovereignty and integrity of India is not harmed. In *Shreya Singhal vs. Union of India* [reported in AIR 2015 SC 1523], the apex court struck down Section 66A of the Information Technology Act to protect the right to freedom of speech and expression.

SPEAKER 7: NEIL BASU

Neil Basu is an advocate practicing in the High Court at Calcutta. The speaker covered the topic of right to privacy in the webinar. The right to privacy has become an important topic of discussion all over the world and one of the major issues is whether right to privacy is a fundamental right or not, under Part III of the Constitution where the fundamental rights are enshrined.

The speaker discussed that the right to privacy was not included within the ambit of a fundamental right and in this context referred to two judgments of the apex court. In *MP Sharma vs. Satish Chandra* [reported in AIR 1954 SC 300], a bench of 8 judges concluded that the right to privacy is not within the ambit of fundamental rights. In *Kharak Singh vs. State of Uttar Pradesh* [reported in AIR 1963 SC 1295], the Supreme Court held that the right of privacy is not a guaranteed right under our Constitution. In

In *Justice K.S. Puttaswamy (Retd.) vs. Union of India* [reported in (2017) 10 SCC 1], a constitution bench was formed to decide whether right to privacy would be regarded as a fundamental right. The Supreme Court held that right to privacy is a fundamental right to be protected under Part 3 - Article 21 in conjoint reading with Articles 14 and 19 of the Constitution.

The speaker discussed the latest privacy debate in the country and in that context referred to the newly enacted IT Rules (26th May 2021) subjects the social media intermediaries to be various rules and regulations. Whatsapp moved the Delhi High Court challenging the rules to determine the originator of message since it violates right to privacy. The government contented that the identification of originators is must to circumvent the chances of cyber crimes and communal violence.

INTERACTIVE SESSION

The students and participants were free to ask and pose any questions to the speakers. Few of the points that came up during the open discussion were:

1. The issue of internet ban in Kashmir and the violation of rights of freedom of speech and expression of those in Kashmir.
2. The notices sent to and arrest of stand-up comedians for their speeches and act, labeling them as contempt and seditious.
3. The lack of access to awareness in the pandemic and the increase in cases of domestic violence as a side effect of the pandemic.

CONCLUDING REMARKS

Human rights are essential and core for the survival of any being in a decent and dignified manner. The Constitution of India is the grundnorm of the country, and has bestowed a bunch of fundamental rights to its people. Right to life and right to freedom of speech and expression are certain fundamental rights which strengthen the backbone of the democratic structure of India.

The independent and impartial judiciary has been a protector and guardian of the rights and has from time to time, by way of judicial creativity and judicial review interpreted law to ensure maximum protection of human rights. The speaker Mr. Colin Gonsalves invited and encouraged all students to participate and become social reformers. The student representative of Jogesh Chandra Chaudhuri Law College Students Union gave a vote of thanks on behalf of the entire student body.

“When someone is abused and afraid, we can step forward to help safeguard her rights. When a vulnerable person is bullied, we can step in. Wherever there is discrimination and exploitation, we can speak up and let it be known that we oppose this, and seek to stop it.”

- **Zeid Ra'ad Al Hussein, former United Nations High Commissioner for Human Rights**

ANNEXURE A

PARTICIPANTS

A	B	C	
S.NO	1. Name	2. E-Mail	
1	Atrayee Saha	atrayeresaha@rediffmail.com	
2	Ananya Singh	ananyasingh190@gmail.com	
3	Siddhant Sharma	siddhantvichar@gmail.com	
4	Tanzila Saba	tanzilasaba120@gmail.com	
5	Shree Gupta	shreeg838@gmail.com	
6	Shoumili Sarkar	shoumilisarkar@gmail.com	
7	Nilofer Parveen	niloferparveen0@gmail.com	
8	Debangshu Mukherjee	debangshumukherjee563@gmail.com	
9	Kanishka Roy	aniray2006@gmail.com	
10	Shuvam Roy	shuvamroy1999@gmail.com	
11	Sekhar Karak	sekhar12001@gmail.com	
12	Neha Parveen	neha75767@gmail.com	
13	Shreya Roy	shreyaroy19010@gmail.com	
14	Nilofer Khan	knilofer8779@gmail.com	
15	Priyadarshini chakraborty	priyadarshinichakrabortym@gmail.com	
16	Debanjana Sen	sen.sinjan2000@gmail.com	
17	Poulami Chaki	pc.chaki07@gmail.com	
18	Sayantani Banerjee	sbanerjee0304@gmail.com	
19	Soumi Bandyopadhyay	soumibanerjee703@gmail.com	
20	Snehangee Dey	snehangeedeey5927@gmail.com	
21	Ayan Chatterjee	ayan chatterjee596@gmail.com	
22	Barsha Dutta	barshadutta0606@gmail.com	
23	Souvik Roy	souvikroyy@gmail.com	
24	Aneeqa Ahmed	ahmedaneeqa97@gmail.com	
25	ISHANI SAMAJPATI	issy4976@gmail.com	
26	Utkarsh Yayati	utkarsh2000yayati@gmail.com	
27	Debasish Mondal	debasishbaby1819@gmail.com	
28	NIRUPAM BHATTACHARYA	adv.nirupam@gmail.com	
29	Saheli Sabnam	sahelisabnam22@gmail.com	
30	Kanisha Chakraborty	kanishachakraborty1997@gmail.com	
31	Anuva Podder	anuvapodder18@gmail.com	
32	Md Saqib Zia	saqib.zia.sz14@gmail.com	
33	Manoj Kr Bhakat	manojbhakat13@gmail.com	
34	Upasana Sarkar	upasanasarkar1999@gmail.com	
35	Enakshi Chakraborty	enakshichakraborty71973@gmail.com	
36	Avigyan Sengupta	avigyan10.rivan@gmail.com	
37	AKBARI KHATOON	akbarikhatoon09@gmail.com	
38	Souvik Mukherjee	scientistm2001@gmail.com	
39	Shreyashi sarkar	shreyashisarkar61@gmail.com	
40	Tabassum Khatoun.	tabassumkhatoun7777@gmail.com	
41	Samrat Saha	samrat9619.ss92@gmail.com	
42	Rajorna Mazumder	mazumderrajorna@gmail.com	
43	Ambika Hansda	ambikahansda75@gmail.com	
44	Adrija Das	adrijadasaich@gmail.com	
45	Dipa oraon	minjdipa6@gmail.com	
46	Chandan Mishra	chandan001mishra@gmail.com	
47	Raima Roy Chowdhury	raimaroychowdhury211@gmail.com	
48	Hritam Saha	hritamsaha.student@gmail.com	
49	Adrija Roychowdhury	rc.adrija839@gmail.com	
50	Qindriila Bhattacharjee	oinbhatt26@gmail.com	
51	Souresh Mandal	susrick13@gmail.com	

ANNEXURE A

PARTICIPANTS

A	B	C	
51	Souresh Mandal	susrick13@gmail.com	
52	Swagata Das	swagatadas682@gmail.com	
53	Nilashrita Ganguly	sarahni0716@gmail.com	
54	Aitijyamoy Mukherjee	aitijyamoy2000@gmail.com	
55	Debapriya Majumder	debapriyomajumder1998@gmail.com	
56	SUSMITA BISWAS	susmitabws9@gmail.com	
57	Pratiti Sarkar	pratitisarkar2327@gmail.com	
58	Tanya Adhikary	taniaadhikary@gmail.com	
59	Siddhartha Chakraborty	sidtunkai@gmail.com	
60	Taniya Mondal	taniyamondal201509@gmail.com	
61	Ranita Das	ranitadas716@gmail.com	
62	Arghyajit Saha	arghyajit21@gmail.com	
63	Rajyashree Mukherjee	titimukherjee006@gmail.com	
64	Sananda Mukhopadhyay	swathisback1234@gmail.com	
65	Komal Agarwal	komalagarwal867@gmail.com	
66	SUMAN SARDAR	Sumanlaw44@gmail.com	
67	SK Samim mahammad	smd5310@gmail.com	
68	Rohan Samal	rohansamar@gmail.com	
69	Eshita Naskar	naskareshita124@gmail.com	
70	Souvick Sarkar	sarkarsouvick487@gmail.com	
71	Rijuan Mandal	rijuan909@gmail.com	
72	Sushruta Kumar Nath	labubiley@gmail.com	
73	Shiladitya Ghosh	aditya.shil.ghosh@gmail.com	
74	Sanchari Roy	sanchariroy.roy10@gmail.com	
75	Dipanjan Ghosh	najnapid@gmail.com	
76	Debojyoti Ghosh	knownmedeb55@gmail.com	
77	Puja Bhattacharya	pujabhattacharya18102001@gmail.com	
78	Aishwarya Nanda	aish.puchi@gmail.com	
79	Alapan porel	alapanporel1@gmail.com	
80	Navin Paul	bhool009@gmail.com	
81	Avijit sardar	avijitsardar993@gmail.com	
82	Aniket Jana	aniketjanaharmonica.001@gmail.com	
83	Goutam Mondal	goutamgtm100@gmail.com	
84	CAESAR KARMAKAR	caesarkarmaqkqr@gmail.com	
85	Arpita Mondal	arpitamondal049@gmail.com	
86	Rahul Kumar Singh	diplomatic8@gmail.com	
87	Puja Das	princespujadas@gmail.com	
88	Debopriya Mukherjee	mukherjeedeopriya1997@gmail.com	
89	Ishika	ishika83358@gmail.com	
90	Debmalya Dasgupta	deb905105@gmail.com	
91	Souvik Halder	souvikhalderpassion@gmail.com	
92	Neha Kumari Shaw	nehakumarishaw6@gmail.com	
93	Ananya Dad	toananyadas@gmail.com	
94	Arin Mandal	arinmandal20@gmail.com	
95	Anupkrishna	anupkrishna532002@gmail.com	
96	Rishita Das	rshitadas557@gmail.com	
97	Atrayee Chatterjee	moutu2011@gmail.com	
98	Swagata Manna	mannaswagata40@gmail.com	
99	Sayani Gupta	indranisanjoy@gmail.com	
100	Trisa seal	trisaseal75@gmail.com	
101	JAYASREE GHOSH	muffet.muffins@gmail.com	

ANNEXURE A

PARTICIPANTS

A	B	C	
102	Azeem Alvi	azeemalvi3@gmail.com	
103	Priyanka Das	priyankadas2302@gmail.com	
104	Sudip Kumar Bera	sudipkumarbera2002@gmail.com	
105	Shivam Kumar	shivam.reso@gmail.com	
106	Subhasis Chakraborty	subhasisc1998@gmail.com	
107	Arnab Mondal	mondalarnab819@gmail.com	
108	Harshit Raj	Harshitraj499@gmail.com	
109	Ronit Ghosh	ronitghosh23@gmail.com	
110	Jessica Roy	roy.jessica1601@gmail.com	
111	Srimoyee Mukherjee	srinoyee.1996@gmail.com	
112	MOJAFAR SK	scholar.mojaffar@gmail.com	
113	Priyanjali Guha Roy	priyanjaliguha@gmail.com	
114	Anusrita Naskar	anusritanaskaran@gmail.com	
115	Sabana Yasmin	yasminsabana481@gmail.com	
116	Swapna Mondal	sm3171138@gmail.com	
117	Sunaina parvin	sunainaparvin2003@gmail.com	
118	Sneha Biswas	snehabiswas936@gmail.com	
119	Tara Hemram	hemramtara6@gmail.com	
120	Kaushik Bandyapadhyay	14piyal@gmail.com	
121	Sinjana De	dsinjana@gmail.com	
122	SHUKLA SAMADDAR	samaddarshukla@gmail.com	
123	Suparna Majumder	majumdersuparna17@gmail.com	
124	Bibaswan Biswas	bibaswanbiswas10@gmail.com	
125	Barsha Hazra	barshahazra2021@gmail.com	
126	Soumili Biswas	soumilib70@gmail.com	
127	Esha Acharya	eshajpg@gmail.com	
128	SUROJIT MONDAL	suerojitmondal2016@gmail.com	
129	Ongkee Roy	ongkeero@gmail.com	
130	Subhajit ghosh	duggu9748@gmail.com	
131	Aaisanee Mitra	aaisanee01@gmail.com	
132	Janhavi Majumdar	janhavi1379@gmail.com	
133	Talat Nazreen	talatnazreen999@gmail.com	
134	Rittika Paul	rittikapaul86@gmail.com	
135	Salina khatoun	mail2salinaali@gmail.com	
136	Nilakhi Roy	roynilakhi30@gmail.com	
137	Subhdeep singha roy	subhodipro98@gmail.com	
138	Sayantana Kar	karsayantan020@gmail.com	
139	Dona Roy	dona01roy@gmail.com	
140	Upasana Chowdhury	upasanachowdhury2001@gmail.com	
141	Nayab Ashraf	nayabashraf17@gmail.com	
142	Rittik Mandal	rittikmandal2@gmail.com	
143	Ankita Datta	ankitadatta002001@gmail.com	
144	Khushi Mondra	khushimondra21@gmail.com	
145	MRITTIKA GHOSH	ghoshmrittika23@gmail.com	
146	Sumik Biswas	soumikbiswas599@gmail.com	
147	Sanjana Goswami	sanjugoswami2000@gmail.com	
148	Ankan Das	ankandas1996@gmail.com	
149	Ayantika Roy	ayantikar522@gmail.com	
150	AYALI NATUA	ayalinatua@gmail.com	
151	Debarjun Dey	debarjunjcllc@gmail.com	
152	Mounamukhar Ghosh	iammounomukhar@gmail.com	

ANNEXURE A

PARTICIPANTS

	B	C
152	Mounamukhar Ghosh	iammounomukhar@gmail.com
153	Abhishek Paul	avipa1577@gmail.com
154	Anushri Ghorai	ghoraid31@gmail.com
155	SK MD WASIM AKRAM	skmdwasimakram6@gmail.com
156	Gulafshan Farheen	gulafshafarheen00000@gmail.com
157	Niladri Das	iamniladrid12@gmail.com
158	Suman haldar	haldarsuman62@gmail.com
159	Salma Sultana	salmasultana55938@gmail.com
160	Protuysha Dey	protuyshadey066@gmail.com
161	Viva Kumari Thakur	vivakmthakur12345@gmail.com
162	ARKABRATA DEY	dey.arka654@gmail.com
163	Taifur Khan	taifurkhanhenga@gmail.com
164	Priti kumari	1357priti@gmail.com
165	Babhru Bahan Bera	babhru.bahan.bera@gmail.com
166	Jaweria Fatema	jaweriafatema@gmail.com
167	SHUBHANGAM JHA	shubhangamjha860@gmail.com
168	AHANA DUBEY	ahanadubey777@gmail.com
169	Mrinangini Gurung	mrinangini2001@gmail.com
170	Kathakali Banerjee	kathakalibanerjee65@gmail.com
171	Neha Singh	nneehaa97@gmail.com
172	Nirupam Das	nirupam2706@gmail.com
173	Manisha Sur	manishasur3@gmail.com
174	SRIJITA NATH	nathsrjita1999@gmail.com
175	Tiyasha Santra	santratiyasha8@gmail.com
176	Debjyoti Chatterjee	debjyoti_cu@yshoo.com
177	Aditya Kumar Mohanty	adityamohanty110@gmail.com
178	Silpa mondal	naskarsilpa100@gmail.com
179	Adrita Chaudhuri	adritachaudhuri18@gmail.com
180	Srijita Mukherjee	srijitamukherjee37@gmail.com
181	Ranapriya Banerjee	rohanbhattacharjee508@gmail.com
182	Debolina Sikder	debolina05092002@gmail.com
183	Sayan Mitra	sayanmitra333@gmail.com
184	Samsul Laskar	samsul.laskar1998@gmail.com
185	Nilanjana Chatterjee	nilanjana chatterjee199@gmail.com
186	Shuvam Kanjilal	shuvamkanjilal30@gmail.com
187	Suvam Shaw	suvamshaw38@gmail.com
188	Ayan Chatterjee	ayanchatterjee596@gmail.com
189	Rasidul Islam	rasidulislam293@gmail.com
190	Priyadarshini saha	sahapriyadarshini786@gmail.com
191	Debojyoti Dam	dam.dd1947@gmail.com
192	Priyanjali Guha Roy	priyanjaliguha@gmail.com
193	Neha sapui	nehasapui62@gmail.com
194	Rupkatha Sarkar	rupkathasarkar5@gmail.com
195	Madhurima Mohajon	madhurimamohajon12@gmail.com
196	Arkya Dey	arkyadey2018@gmail.com
197	Sagar Biswas	advsbiswas07@gmail.com
198	Alisha Biswakarma	alishabiswakarma1999@gmail.com
199	Shounak Mondal	shounakiandiaries29@gmail.com
200	MD DANISH FAROOQUI	farooquimddanish@gmail.com
201	Deshma Ghosh	ghoshdeshma@gmail.com
202	Titli Chakraborty	titlichakraborty74@gmail.com

ANNEXURE A

PARTICIPANTS

A	B	C
202	mn.chakraborty	mnchakraborty7@gmail.com
203	Souhardya Biswas	souhardyasamarbiswas@gmail.com
204	Arkapriya Das	arkapriyadas50@gmail.com
205	Joyshree Banerjee	joyshreebanerjee97@gmail.com
206	Rajdev Bhattacharjee	rajdevbhattacharjee@gmail.com
207	Arjita Mukherjee	arjitallegal@gmail.com
208	Shreyansi Sarkar	shreyansisarkar0077@gmail.com
209	Nimisha PS	nimishanidhin95@gmail.com
210	Pubali Mukherjee	mukherjeepubali23@gmail.com
211	Suman	sumantamondal118@gmail.com
212	SACHINDRA MOHAN MONDAL	chirag20021999@gmail.com
213	Riya Singh	riya.singh050999@gmail.com
214	Madhuri Chakraborty	madhurichakraborty45@gmail.com
215	Soumyadeb Chakraborty	soumyadebchakraborty25@gmail.com
216	Sayani Halder	sayanihalder587@gmail.com
217	Ankita Chakraborty	ankita13997@gmail.com
218	Anjali kumari cinni	angelraj9445@gmail.com
219	Saumya Shikha	shikhasaumya111@gmail.com
220	Munmun Chakraborty	munmun.ckty@gmail.com
221	Tuhin Chatterjee	tchatterjee134@gmail.com
222	Pranit Biswas	anonymouswriter919@gmail.com
223	Pritha das	Prithadas2812@gmail.com
224	Aliva Ghosh	ghoshsampa19@gmail.com
225	Dipankar bhakta	Dipankarbhakta10@gmail.com
226	Susmita Maiti	susmitamaiti008@gmail.com
227	Aashutosh Bhattacharya	adv.aashutosh.b@gmail.com
228	Gourab Adhikary	gourabgourab700@gmail.com
229	Misiral Bhattacharya	misirabhattacharya@gmail.com
230	Abhrajit Roy Choudhury	abhrajitc69@gmail.com
231	Ranapriya Banerjee	rohanbhattacharjee508@gmail.com
232	Jayshree Dey	Shree11neel@gmail.com
233	Alminhaz Karim	alminhazkarim@gmail.com
234	Utsa Poddar	utsapodder9991@gmail.com
235	Additiya Mookerjee	additya.m@gmail.com
236	Aritra Roy	aritraak01@gmail.com
237	Samrat Das	samratsam056@gmail.com
238	Zunaid Akhtar	xunaid.46@gmail.com
239	Shweta Priya	shweta_priya740761@gmail.com
240	Rajni Sharma	raini.dav@gmail.com
241	Aishwarya Adhikari	aishwarya@hrln.org
242	Soumitra Karmakar	soumitra.chakraborty91@gmail.com
243	Aparajita Bose	aparajita@hrln.org
244	Venkatesh Kodukula	kodukulavenkatesh@gmail.com
245	Komal Agrawal	agrawalkomal410@gmail.com
246	Sanchayita Jadav	sanchijadav22@gmail.com
247	Billeswar Sinha	advbilleswar@gmail.com
248	Siddhartha De	siddharthade.82@gmail.com
249	Tanbir Alam	dtanbiralam02@gmail.com
250	Sourat Nandy	souratas10@gmail.com
251	Aindrila Dey	aindriladey1993@gmail.com
252	Amit Kumar Middya	amitkumarmiddya@gmail.com
253	Abu Sayed Mostafa Siraj	sirajasm.sisan24@gmail.com
254	Rohini Roy	roy.rohini22103@gmail.com

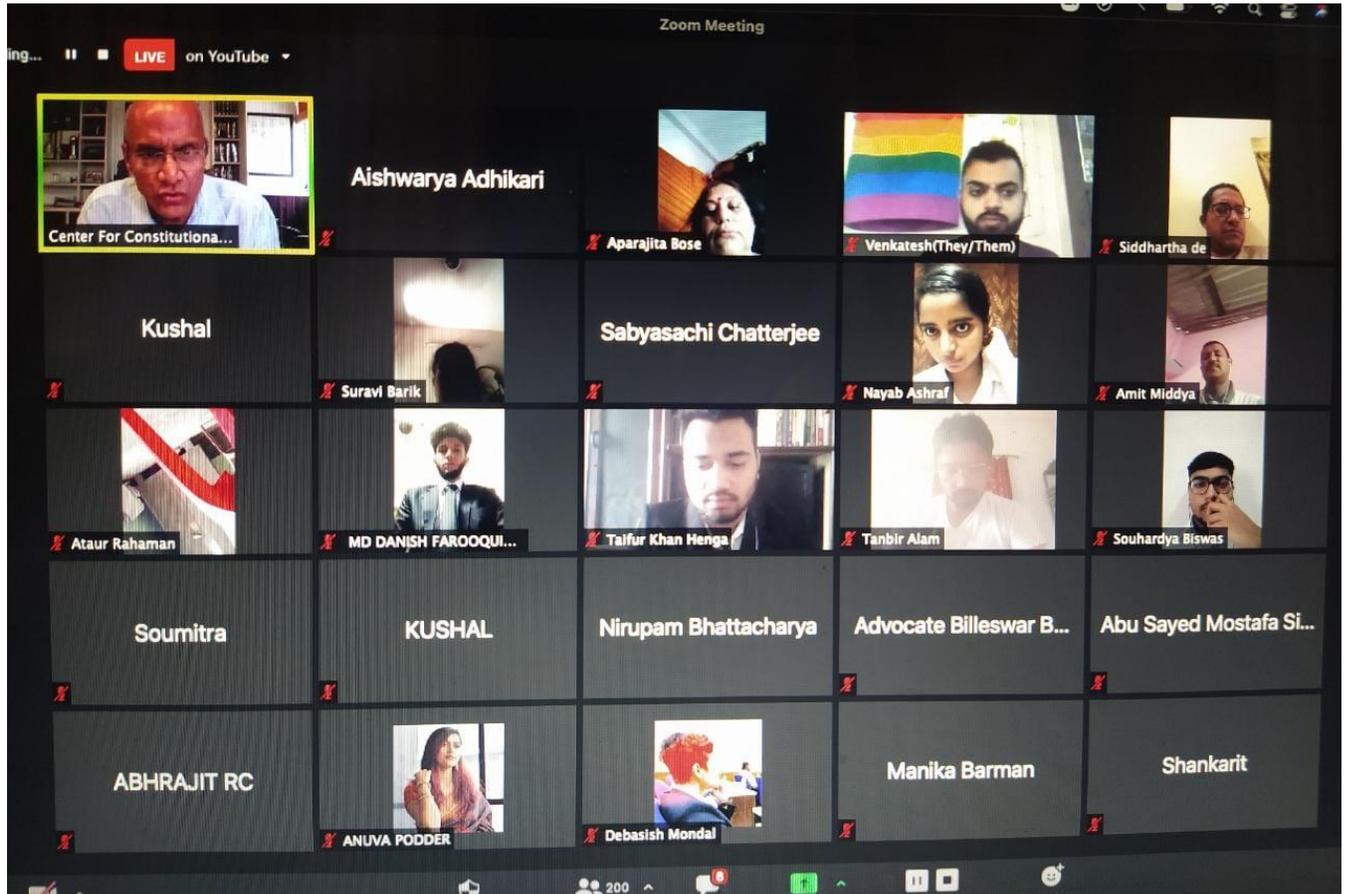
ANNEXURE B

ZOOM WEBINAR SCREENSHOTS



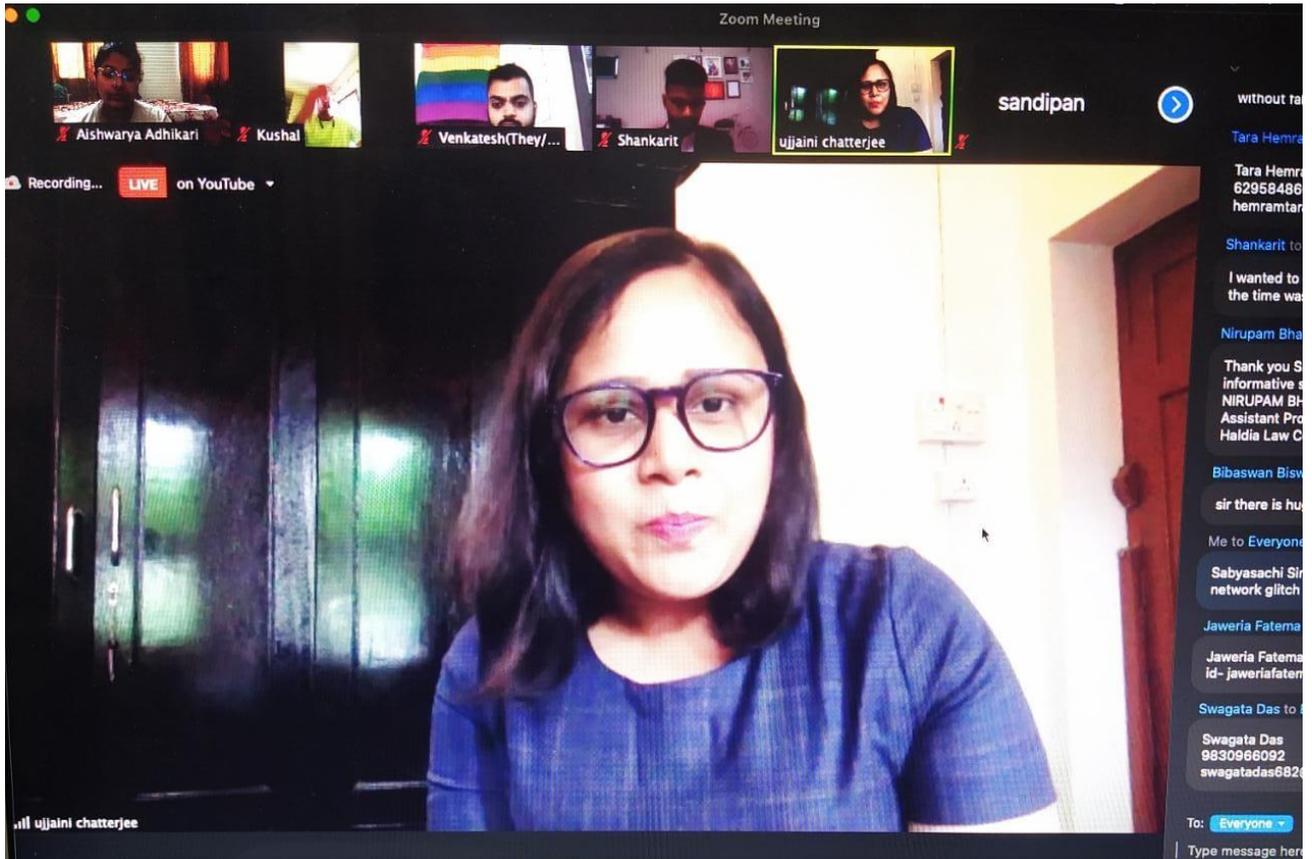
ANNEXURE B

ZOOM WEBINAR SCREENSHOTS



ANNEXURE B

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