

WEBINAR ON: USE OF LAW FOR THE PROTECTION OF HUMAN RIGHTS OF REFUGEES AND MIGRANT LABOUR

DATE: 19th JUNE, 2021

TIME: 10:00 A.M. – 1:00 P.M.

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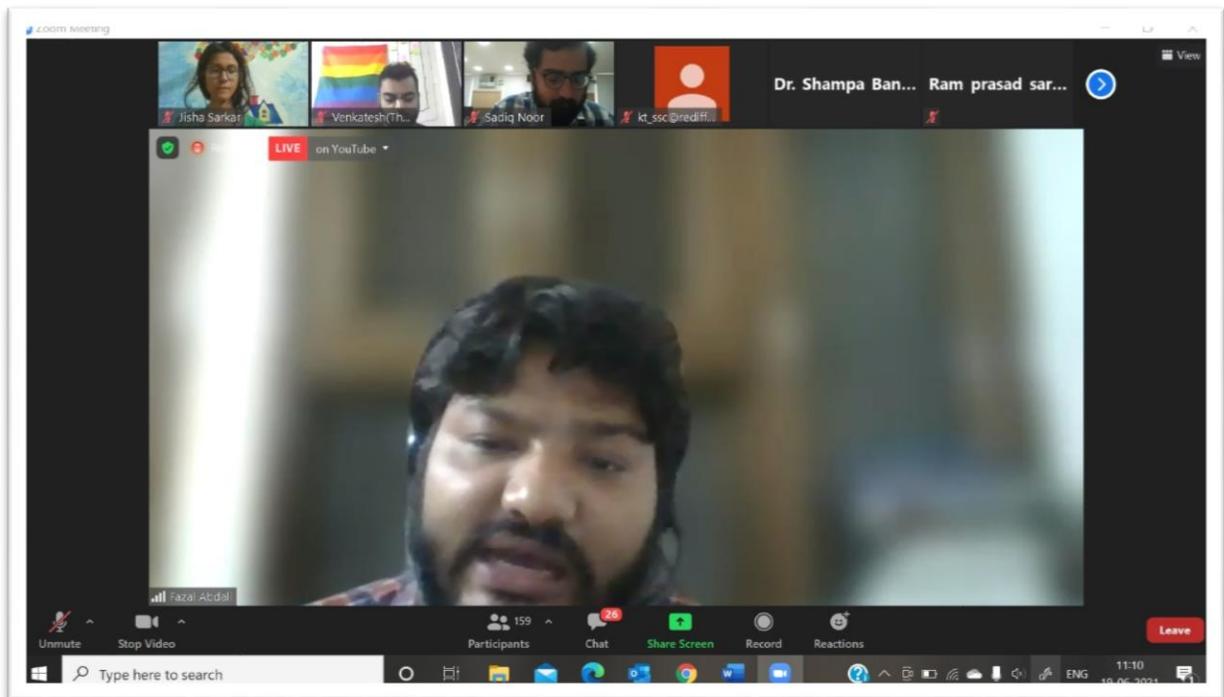


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SCHEDULE FOR THE WEBINAR

Sr. No.	Time	Session	Speaker
1.	10:00-10:05	Welcome Note	Aparajita Bose, HRLN Kolkata
2.	10:05- 10:25	National framework for protection of Refugees	Fazal Abdali, Advocate, Supreme Court of India, HRLN
3.	10:25-10:50	Detention and Legal Remedies of the Refugee Prisoners in West Bengal	Shampa Banerjee Ghosh, Principle of George School of Law
4.	10:50-11:15	Status and Rights of the Refugees in India	Sadiq Noor, Advocate, Supreme Court of India, HRLN
5.	11:15 – 11:30	Discussion	
6.	11:30-11:50	Labour Rights in India	Nirmal Gorana, Activist, HRLN
7.	11:50-12:10	Problem faced by the migrant labourers during the Pandemic	Kamal Tewari, Trade Union Activist
8.	12:10-12:30	Situation of Bonded Labour during COVID 19	Gunjan Singh, Advocate, Supreme Court of India, HRLN
9.	12:30-1:00	Discussion followed by Vote of thanks	

INTRODUCTION

Human rights violations are done in numerous ways, and two sets of human beings being abjectly violated are the refugees and labourers.

The entire world community is witnessing a large population of vulnerable group being subjected to torture and atrocities and violation of human rights. The refugees and internally displaced have been and are at the mercy of the other states and international protection. The interdependence of the international community can be exemplified by the refugee situation. It reflects how the actions and issues faced by one state can have repercussions on other states. The refugee problem also showcases the issue of human rights. Violations of the rights of minorities and racial groups are manifestly at the source of both mass exoduses and internal displacements.

The labour class is often looked down upon as menial and they are met with inhumane work conditions and unfair compensations. The issues of minimum wage, overtime pay, compensation on death, provision of food (ration) etc. being certain basic rights for dignified work and life, are still not available to a vast population of the labourer community.

In the webinar, senior legal practitioners, professor and trade union member have enlightened the participants with their knowledge and experience and covered different and important facets of law pertaining to refugee and labour rights in India.

SPEAKERS SESSION

Aparajita Bose of HRLN Kolkata introduced the topic of the webinar 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. She welcomed the students of the Department of Law, Calcutta University and all the lawyers, activists and participants of the webinar.

SPEAKER 1: FAZAL ABDALI

Fazal Abdali is an advocate associated with HRLN and he discussed the national framework for the protection of refugees in India. The speaker discussed that in general parlance, refugees are considered to be a 'Burden of the State'. The enigmatic Newton was a refugee who had sought asylum and his contributions are world famous. The international definition of refugee has a restricted ambit. Refugee can be a person who has well founded fear of persecution, for e.g. Sri Lankan Tamils. Three key elements of the definitions are:

- well-founded fear of persecution;
- race, religion, nationality, member of a social or a political group;
- person has crossed the international border.

It is not necessary that the person must have faced persecution, it is only necessary that there was well founded fear of persecution, e.g., the persecution of Bangladeshi bloggers and gender persecution in India (in form of female infanticide). If one has not crossed international border, then one is internally displaced, for instance the situation of Kashmiri pundits. Tourists are not refugees.

India has not signed the 1951 Refugee Convention and has no domestic/municipal laws on refugees. It is wrongly said that refugees in India have no protection in India, and is an excuse of the administration. The protection is awarded under the Constitution of India. Article 21 of the Constitution grants the right to life and liberty to all persons and not only citizens. In *State of*

Arunachal Pradesh vs. Khudiram Chakma [reported in AIR 1994 SC 1461], the Hon'ble apex court held that once asylum is granted, it cannot be taken back.

The principle of non refoulment is a part of Article 21. As per the Universal Declaration of Human Rights, 1948 (“UDHR”), everyone has a right to asylum. UDHR, ICCPR, Convention Against Torture, all provide for the provisions of non refoulment and protection of persons seeking asylum. The principle of non-refoulment has over time gained recognition as *Jus cogens* and is a part of customary international law. Hence, even though India, has not signed the convention, it is bound by the customary principle of non-refoulment. The Foreigners Act, 1946, provides that a foreigner is a person who is not a citizen of India. It does not distinguish between those who come to India for economic, tourism or refuge purposes. In India, the following is the framework for protection:

1. Constitution of India;
2. Precedents; and
3. International Conventions and Treaties (signed by India).

In *NHRC vs. State of Arunachal Pradesh* [reported in AIR 1996 SC 1234], the apex court held that the state is bound to protect life and liberty of every human being, and no one be denied protection under law and all must be treated equally under law. In *Chairman Railway Board vs. Chandrima Das* [reported in AIR 2000 SC 997], the apex court defined life, referred to the UDHR and held that the term life cannot be narrowed, it is to be interpreted to widen the ambit, and the right to life is not for Indian citizens only and includes non citizens too. Article 51(c) of the Constitution provides that India shall foster respect for international law and treaty obligations. The Vishakha guidelines issued by the apex court provided that in the absence of municipal laws, international law and treaties must be adhered to. In *Ktaer Abbas Habib Al Qutaiji vs. Union of India* [reported in 1999 CriLJ 919 Guj. HC], the Gujarat High Court while dealing with the detention of Iraqi refugees, discussed the principle of non-refoulment at length. In *Premanand vs. State of Kerala* (2017), the Kerala High Court observed that a refugee stands on a different footing from a foreigner and should not be treated at par. In *Dongh Lian Kham vs. Union of India* (2015), the Delhi High Court held that the principle of non refoulment is required to be taken as part of the guarantee under Article 21, however it shall not be at the expense of national security. In *P. Ulaganathan vs. Union of India* (2019), the Madras High Court held that the petitioners come to India when they face great threat to life and they cannot wait for visa.

SPEAKER 2: SHAMPA BANERJEE GHOSH

Shampa Banerjee Ghosh is the Principle of George School of Law and she covered the topic of detention and legal remedies of the refugee prisoners in West Bengal. The legal definition of refugees is different from those who in reality cross borders and seek refuge. Refugees have special rights and must be granted protection under the UN Conventions. The Bangkok Principles of 1966 embody the principle of non refoulment. India is a member of the executive committee of the UNHCR's governing body.

Around 2019, most of the refugees in West Bengal belonged to Rohingya community from Myanmar, who had come in to escape from ethnic cleansing. The Rohingyas bear a facial resemblance to the Bengalis of Bangladesh and on their encounter with the Border Security Forces (“**BSF**”), they are booked under Section 14 of the Foreigners Act and sent for trial before the Magistrate, and the offence is punishable with upto 2 years of imprisonment. Rohingyas often pose as Bangladeshis and are put in detention. Children are treated as having conflict with law and often put in correctional homes and separated from the families.

A person can seek for asylum and cannot be deported or pushed back. The procedural flowchart set out in CrPC and CPC is followed for the refugees and later an asylum seeker status identity card is issued. The UNHCR tries to rehabilitate and give assistance to the refugees and they are sent to refugee camps which are congested. Other authorities are not bound to accept the refugee ID cards issued. In the Johra Begum case, the refugees were sent to a camp in Delhi. In *Abdul Shukur vs. State of West Bengal* (2019), the Calcutta High Court held that deportation of refugees would tantamount to death sentence and state must accord protection to life under Article 21 of the Constitution of India.

SPEAKER 3: SADIQ NOOR

Sadiq Noor is an advocate associated with HRLN and he discussed the Status and Rights of the Refugees in India. The speaker shed light on the writ petition namely *Jaffar Ullah vs. Union of India* (2018), wherein the Supreme Court by an order dated 11th May, 2018, recognized the lifestyle, hygiene, healthcare services, water, electricity, water supply, etc. of the refugees and the camps and appointed Nodal Officers. The speaker spoke on the Kanchnakunj settlement order for the Rohingya settlements in Delhi. In *Hirsi Jamaa vs. Italy* (2019), the European Court of Human Rights, held that the principle of non-refoulement prohibits returning people to a country where they run the risk of human rights abuses.

In *Bandhua Mukti Morcha vs. Union of India*, the court laid down that right to life must be right to dignified life. The refugees must be provided with facilities to ensure a dignified life. In *Dongh Lian Kham vs. Union of India* (2015), the Delhi High Court held that there is fine line between economic migrants and those migrating due to persecution. Circulars and opinions on how refugees need to be treated in India and the UNHCR can facilitate in getting help from the Union. There must be ration distribution for refugees.

SPEAKER 4: NIRMAL GORANA

Nirmal Gorana, is an activist and advocate associated with HRLN. The labour has not been respected. The principal employer has to give certain social security benefits. There are workers under 18 years of age. Certain categories such as brick kiln workers, rag pickers, sex workers, construction workers should be given the status of workers. There are 50 crores bonded labourers. In 1982, Justice PN Bhagwati observed that forced labour is a bonded labour. The Bonded Labour System Abolition Act, 1976 was enacted to eradicate labour. The recent labour laws have opened doors to slavery. A bonded labour is:

1. Advance amount or benefit in place of wages
2. Forcefully made to work
3. Restriction of movement
4. If product can't be sold at market rate

Section 15 of the Act imposes the burden of proof on the principal employer to provide evidence that his employees are not bonded. The Vigilance committee has been set up in the district and sub-division. Section 21 provides for summary trial. The District Magistrate has to give Release Certificate and interim relief amount of INR 20,000/-. The rehabilitation laws provide for compensation of upto INR 1,00,000/- to male and upto INR 2,00,000/- to female, and upto INR 3,00,000/- to trafficked persons and children. Agricultural sector worker is to be given the land, others to be provided houses. However, these laws have not yet been fully implemented.

Rehabilitation is denied due to lack of release certificates. In view of covid-19 pandemic, starvations, bonded labour went into further darkness. Most bonded labourers can be found in the agriculture sector. The Bandhua Mukti Morcha rescued around 1,80,000 labourers. Rajasthan, Maharashtra and Haryana made rehabilitation camps. The bonded labourer can appear in- person and complain to the DM who has to rescue them. A survey of bonded labourers must be conducted.

SPEAKER 5: KAMAL TEWARI

Kamal Tewari has lead various labour unions and Trade Unions. He has a keen understanding of the issues concerning labourers and has given an insight into the problems faced by the migrant labourers during the pandemic. In 1979, laws pertaining to migrant workers were to be implemented but even the debates have not been held yet. There are debates being held in a intellectual circle but it does not affect the workers since we do not representing any sector.

The trade union history dates back 100 years including unions for migrant workers. A grass root level organisation of migrant workers is needed. Construction Workers constitute more than 55% of the migrant workers. The building construction workers not being given any training and there is no training institute for construction workers. There is no future for the union of formal sectors without that of the informal sectors. Social security is a need for trade unions. Some laws are there but are insufficient. The pre-condition to success of laws is to organize them. The migrant labourers have to be active and participate in the Unions. The Inspect of Factories under the Factories Act is an overburdened inspector.

SPEAKER 6: GUNJAN SINGH

Gunjan Singh is an advocate practicing in the Supreme Court and has been associated with HRLN Delhi. The speaker spoke on the situation of bonded labour during covid-19 pandemic. The scale of crisis has risen. The speaker discussed the cases of Alakh Alok Srivastava vs. Union of India and Swami Agnivesh vs. Union of India. The Solicitor General of India made a statement that there are no migrant workers in the streets and the Supreme Court wrote an order recording this statement. However, in fact, the situation was worse.

The Constitutional Court should step in to protect the rights of the migrant workers. During March- April i.e. Phase I litigation of migrant workers, was sad and depressing. Then during May i.e. Phase II, suo moto Petition no. 6 of 2020 was taken up (with respect to free travel, register in ticket, etc.) in Tamil Nadu. The 9th June order provided interim measure in respect of food, travel, withdrawal of FIR. Long run measures are required to address the problem. The states do not even know the number of migrant workers and there is no way to track it. The 1979 Inter State Migrant Workers Act requires registration. The long term steps for registration of workers came in the 31st July Order. The Unorganised Workers Social Security Act, Building and Construction Workers Act, Inter State Migrant Workers Act are certain legislations. There is a lull due to media.

In april, the second wave posed a graver problem and the Supreme Court order requiring steps for registration and the affidavit were silent. The speaker referred to the case of ShramJivi SLP Criminal 153 of 2012. As per the Chief Secretary of Labour (Jan 2019) database is finalized. On 11th June, 2021, the matter was heard and the judgment is reserved. The registration of workers is the focus for the Supreme Court. Workers are invisibilized and hence identity cards need to be issued. Another aspect is that states further exploited workers by increasing the working hours under the garb of public emergency stipulated under Section 5 of Factories Act.

In Gujarat, the work hours are around 12 hours and that too without overtime pay. The Gujarat Mazdoor Sabha went to the Supreme Court challenging it and J. Chandrachud held it to be illegal and not permissible and that an economic crisis cannot be called a public emergency. The burden

of economic crisis cannot be on the weary shoulders of the working class. Statutory benefits cannot be taken away in a mechanical fashion. The states exploit the Building and other Construction Workers Act, it required a cess to be collected from the builders and the workers. However, no Boards were constituted after 1996. The speaker referred to the National Campaign Committee for Construction Labour (J. Madan Lokur).

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. Elaboration on the concepts of safe haven and safe passage. The speaker Fazal Abdali answered that it is a myth that there is a safe passage given by any nation, refugees have been treated as aliens. India has signed the Global Compact on refugees and India should be a safe haven.
2. Granting asylum on the basis of religion is under intelligible differentia. It was said that granting asylum is under the Conventions. If there is a fear of being persecuted, including on the basis of religion, hence, the definition includes religion itself. There cannot be subdivisions within the ambit of religion. Differentiation of people coming from the same country facing persecution not intelligible differentia.
3. Whether granting of limited citizenship can diffuse tensions between asylum seekers and indigenous people. The speakers stated that refugee status is a temporary status. There are durable solutions for refugees, such as: (a) Dignified, safe, voluntary repatriation, (b) Naturalisation, or (c) Resettlement in a third country. The host communities should be sensitized to the history of the refugees. Division of border came into existence after humans.
4. How do determine if refugees came for economic reasons. The speaker stated that the respective country reports to the UN agencies about situations in countries. The UNHCR has a Refugee Status Determiner procedure.
5. Remittance behaviour from naturalised migrants and non- naturalised migrants. The speaker stated that multiple funders are there for the refugees and it provides employment to citizens as well. UNHCR figure of 40,000 refugees cannot determine economy but does give employment to citizens. E.g., Bangladesh has huge refugee population and

economic inclusion of refugees. It can be followed anywhere without a large impact on any country.

6. Whether the concept with respect to refugee protection change with CAA, NRC. CAA is discriminatory. We cannot have sub- class and sub- categories of religion, and the countries cannot be picked. The legislation should not pass the test of Article 14. E.g., does not cover the Ahmadias of Pakistan, Hazaras from Afghanistan.
7. Whether the privatization drive affect the migrant workers. The speaker stated that workmen categories - contractual systems, regular perennial nature of jobs will be outsourced and the mazdoor andolan will be negatively impacted.
8. On the aspect of minimum wages in India, the speaker stated that living wage has to be introduced. The NREGA workers are not being given minimum wages. The minimum wage in Delhi is higher than that in the rest of the country.
9. In respect of the drawbacks of the 31st July Order, the speaker stated, further steps need to be taken. The conditions must be imposed on State governments to update the concerned parties. There must be directions for free rations, cash assistance to be given, the apex court never directed it. Millions of migrant workers have suffered massively. Food Corporation of India's godowns are flooded with grains, yet distribution of free ration was not directed. The Court was not convinced with the arguments for food and financial security of the workers.
10. Economic immigrants are a class with different rights and the MNCs use cheap labour.
11. In respect of the grounds for compensation for death, the speaker enumerated as State's failure (the jurisprudence of right to life). On death while working, employees (there must be a liberal definition) registered under Employees State Insurance are covered. There is lingering question on the condition of workers not registered and if the State can deny compensation on the ground of non- registration.

CONCLUDING REMARKS

People are divided by borders and each and every one deserves to peacefully co-exist. There are certain classes that violate human rights of others by inter alia subjecting them to torture and/or exploiting them. In such times, it is the fellow human beings that are required to step up and stand for those being subjugated and violated.

Opening gates to refugees is one way of lending and reaching out to ensure that the human right of those seeking assistance is preserved. With the increasing and perpetual atrocities being cast upon various groups and communities at the hands of some others, an international awakening is much needed and a push to all the other states to extend an arm and shelter the refuge seekers. International law is not binding on all states and the implementation is subject to not being in contravention with the domestic laws. In India, there is no special law for refugees and the courts have been the protector and guardian for the refuge seekers.

In the wake of the pandemic, India has been faced with numerous issues, a large population being the migrant workers and labourers, left stranded and to fend for themselves. The labourers are still grappling with age old issues such as bonded labour, no overtime payments, no minimum wages, cheap labour, etc. The legislation and implementation of certain laws for protection is essential and India being one of the largest democracies has to power through.

The student representative of Department of Law, Calcutta University gave a vote of thanks on behalf of the entire student body, followed by a vote of thanks by Aparajita Bose of HRLN.

“Refugees are mothers, fathers, sisters, brothers, children, with the same hopes and ambitions as us—except that a twist of fate has bound their lives to a global refugee crisis on an unprecedented scale.”

- Khaled Hosseini

ANNEXURE A

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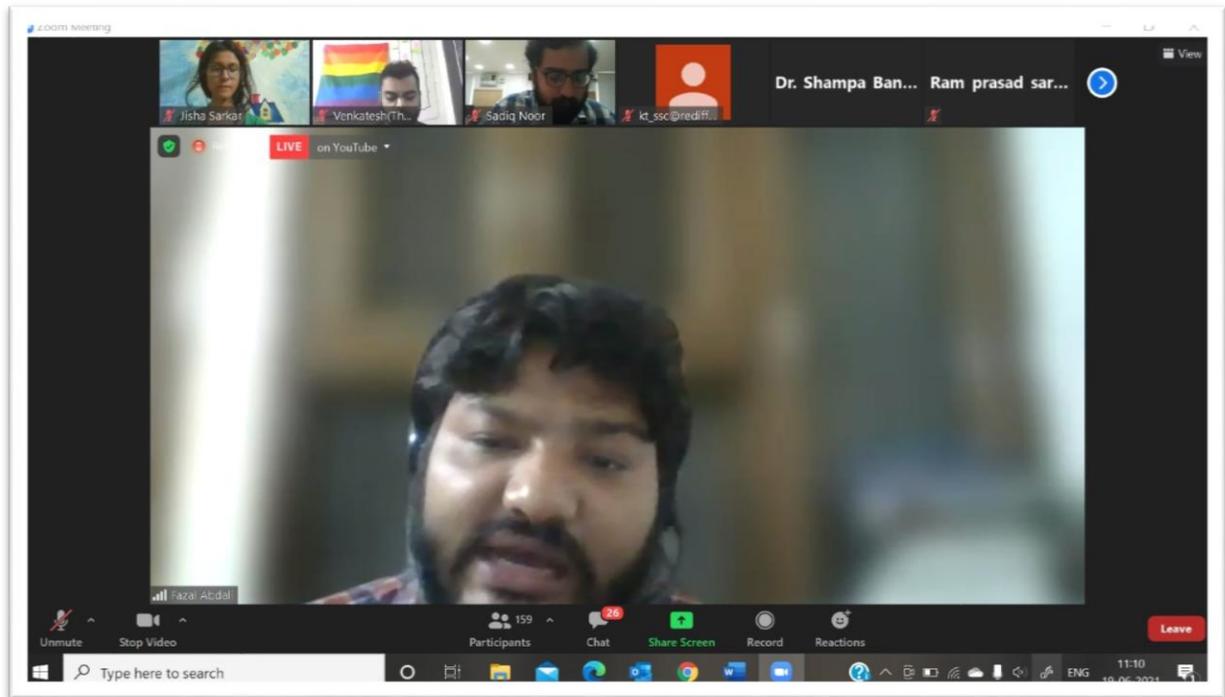
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ANNEXURE B

ZOOM WEBINAR SCREENSHOTS



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