

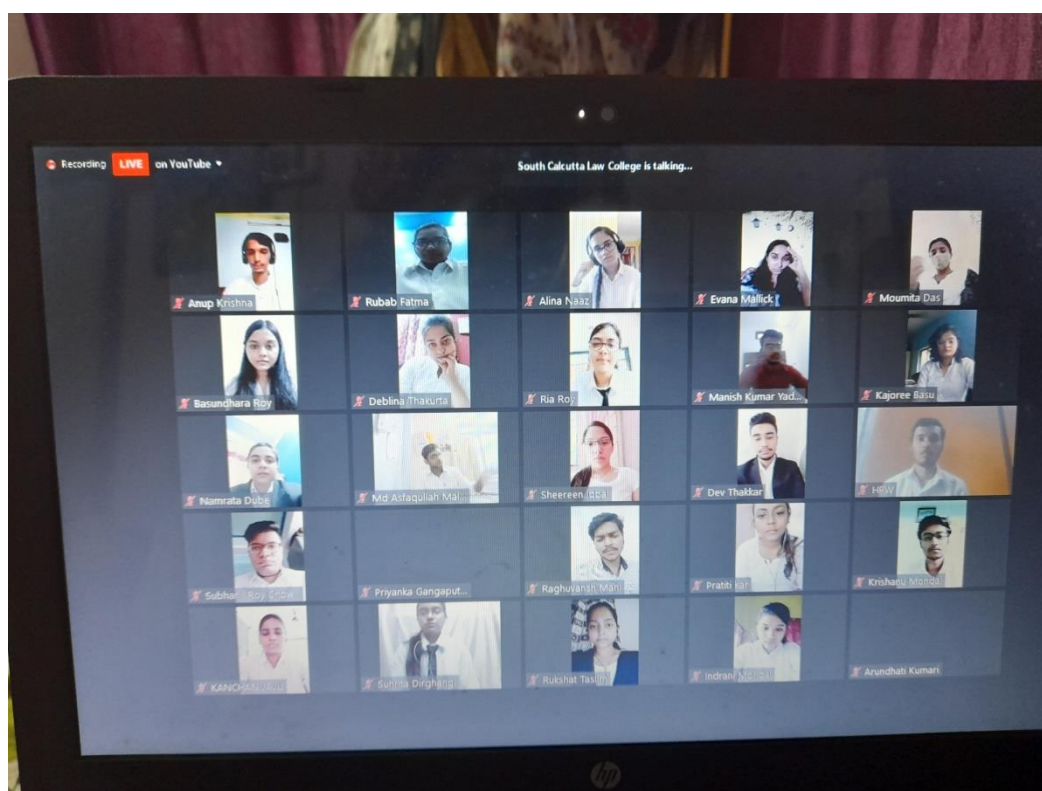
# **WEBINAR ON: USE OF LAW FOR THE PROTECTION OF HUMAN RIGHTS OF WOMEN AND CHILDREN**

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**DATE: 15<sup>th</sup> JUNE, 2021**

**TIME: 10:00 A.M. – 1:00 P.M.**

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## **SCHEDULE FOR THE WEBINAR**

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<b>Sr. No.</b>	<b>Time</b>	<b>Session</b>	<b>Speaker</b>
1.	10:00-10:05	Welcome Note	Aparajita Bose, HRLN Kolkata
2.	10:05- 10:25	Role of Child Welfare Committee (CWC)	Aniruddha Bhattacharya, Advocate, Calcutta High Court
3.	10:25-10:45	Role of Juvenile Justice Board (JJB)	Arindam Jana, Advocate, Calcutta High Court
4.	10:45-11:05	Child Marriage and trafficking	Gargi Lahiri, Lecturer, South Calcutta Law College
5.	11:05-11:25	Protection of Children from Sexual Offences (POCSO) Act, 2012	Sabyasachi Chatterjee, Advocate, Calcutta High Court
6.	11:25 – 11:30	Discussion	
7.	11:30 – 11:50	Increase of Domestic Violence during the pandemic	Nayana Chatterjee, Vice Principal, South Calcutta Law College
8.	11:50-12:10	Divorce Law along with alimony pendente lite scope	Dr. Sangeeta Roy Maitra, Prof., Hooghly Mohsin College
9.	12:10- 12:30	Abortion Rights in India	Sneha Mukherjee Advocate, SC, HRLN
10.	12:30-12:50	Obstetrics Violence & Reproductive Rights in India	Deepak Singh, HC Patna, HRLN
11.	12:50-1:00	Discussion followed by Vote of thanks	

# INTRODUCTION

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*"Human rights are women's rights and women's rights are human rights, once and for all."*

**- Hillary Rodham Clinton**

The half or more than half of the world's human population is the female population. Children are torch bearers of the society. It is the women and children of the society who have been time and again subjected to patriarchal and masculine toxicity and superiority. The women and children have faced innumerable discriminations and violations and special legislations to protect and safeguard their rights.

Protecting women's rights is important in itself. But it also tends to reap benefits for their children. Conversely, protecting the rights of children (particularly girls) is the first step in promoting gender equality for women. The stereotyping of gender roles and gender-based discrimination begins in childhood. 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 pertaining to children and women rights in India.

## **SPEAKERS SESSION**

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*Aparajita Bose* of HRLN Kolkata introduced the topic of violence against women and children 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 South Calcutta Law College and all the lawyers, activists and participants of the webinar.

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### **SPEAKER 1: ANIRUDDHA BHATTACHARYA**

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*Aniruddha Bhattacharya* is an advocate at the High Court at Calcutta and he discussed the functioning of the Child Welfare Committees (CWC). A child as defined under the Juvenile Justice Act, 2015 is any person who has not reached the age of 18. The child must require special care and protection. The exploitation of children is very high in third world countries like India. In the Directive Principles of State Policy under the Constitution, the State is mandated to provide special provisions for children. Juvenile Justice Act, 2015 was passed to make more comprehensive provisions for the welfare of the children. The speaker dealt with and gave a background on the constitution, functions and acts of CWC.

At the onset, the CWC conducts a preliminary investigation in order to take cognisance of a case. Any person i.e. police officer, individual, NGO etc. can produce the child in need of care or protection before the CWC.

The State Government by notification in the gazette is entitled to constitute a CWC in every district. The CWC is an autonomous body, it has complete independence to conduct its own affairs and investigation. CWC constitutes of a Chairperson and four other members. One woman must be present as a part of the CWC and an individual with at least 7 years of experience in child welfare must be present. The CWC has a tenure of not exceeding 3 years. The CWC is a quasi-judicial committee.

The CWC can direct the probation officers, NGO to conduct a social investigation. Another important function is that the CWC is responsible for conducting an investigation to declare that a person is fit or eligible to take care of a child. If need arises, the CWC can also place a child in foster care. The CWC is also tasked with the duty of rehabilitation of the child.

A biological parent can also surrender a child to the CWC when he/she is indisposed from taking care of the child subject to the execution of a surrender deed issued by the CWC. The CWC may also declare that an orphan is deemed fit for adoption. In case the CWC comes to the conclusion after investigation that a child has been abused or exploited, it is free to issue directions reprimanding the police or other authorities under whose care the child had stayed. The CWC may also issue suo-motu cognizance of a case of child abuse.

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## **SPEAKER 2: ARINDAM JANA**

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*Arindam Jana* is an advocate at the High Court at Calcutta and he spoke about the Juvenile Justice Boards in India. The Juvenile Justice Act 1986 was enacted to extend better protection to children. The age of majority in this legislation was 16 years for women and 18 years for men. Thereafter, the Juvenile Justice Act, 2000 was enacted.

The new Juvenile Justice Act, 2000, made two categories: (1) a juvenile in conflict with law; and (2) a destitute or neglected juvenile in need of care and protection. In 2005, an amendment was enacted to constitute juvenile justice courts in every district.

The Juvenile Justice Act 2015 was then enacted. The primary objective deals with various provisions. If a juvenile above 16 years commits a heinous crime, a preliminary investigation assessing the mental and physical abilities of the child has to be done by the Juvenile Justice Board. After that, the child can be tried as an adult in the sessions court. The 2015 Act specifies the various powers of the Juvenile Justice Board.

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## **SPEAKER 3: GARGI LAHIRI**

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*Gargi Lahiri* is a lecturer at the South Calcutta Law College and she spoke on the topic of child marriage and trafficking. The United Nations Office on Drugs and Crime (UNODC) Report 2020 has identified trafficking under the veil of marriage as under reported global form of human trafficking. Child trafficking through child marriage is very difficult to tackle because of the deeply rooted patriarchal notions. The reasons for child marriage include dowry system, illiteracy, caste system and other socio economic factors. Children from poor family backgrounds are main targets of child traffickers. The desire to control female sexuality also contributes to an increase in child marriages and other forms of exploitation.

Some of the legislative frameworks which govern child trafficking are the Universal Declaration of Human Rights, 1948, International Convention on Economic and Social Rights, 1966, International Convention on Civil and Political Rights, 1966 etc. However, the lacuna exists in these legal instruments as they do not specify the minimum age to have the capacity to marry.

Section 375(2) of the Indian Penal Code permits sexual activity of a man with his wife who is above 15 years of age. However, the Prevention of Children from Sexual Offences Act (POCSO) does not permit any form of sexual activity with a minor i.e. someone who is below 18 years of age. So both these legislative provisions are in conflict with each other. In the case of *Independent Thought vs. Union of India* [reported in (2017) 10 SCC 800], the Supreme Court declared that the age of consent for any minor in regards to sexual activity must be 18 years. Due to the ongoing pandemic, exploitation of young girls and child marriages has increased. The victims have no resort or respite.



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## **SPEAKER 4: SABYASACHI CHATTERJEE**

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*Sabyasachi Chatterjee*, Advocate, High Court at Calcutta, has been associated with HRLN and worked on several matters. The speaker spoke on the topic of Prevention of Children from Sexual Offences Act, 2012 (“**POCSO**”). This legislation came into force because the legislature realised the need for a special law protecting the rights of children as permitted under Article 15(3) of the Constitution of India. Special treatment should be extended to children since their maturity differs from adults. This legislation outlines how various authorities should deal with children who have been victims of sexual offences.

The POCSO Act has also negated any form of sovereign immunity that is usually extended to police personnel and armed forces. Section 3 of the POCSO Act outlines the definition of penetrative sexual assault. The perpetrator under the legislation could also be a minor and despite that he/she could be tried under this legislation. The legislation also provides for counselling and rehabilitation of children. The Juvenile Justice Act focuses on reformatory justice and so most provisions are structured towards reformation and rehabilitation of minor delinquents.

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## **SPEAKER 5: NAYANA CHATTERJEE**

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*Nayana Chatterjee* is the vice-principal at South Calcutta Law College, and she spoke about the increase of domestic violence cases during the Covid-19 pandemic. In our country, most victims are helpless and are often afraid to seek legal remedy due to increased social stigma. A rampant cause of domestic violence during pandemic is the high level of unemployment that furthers torture and harassment of women. The patriarchy and toxic masculinity also leads to sexual violence against women.

As per recent NCB data, majority of perpetrators of sexual violence were known / family members of the victim. During the lockdown, victims have been isolated and locked up with their perpetrators. However, a lot of NGOs are taking initiatives to extend support to women who are victims of sexual harassment during the pandemic. Most women especially in the rural areas do not have access to smart phones and therefore are unable to seek institutional or legal assistance from those such as Protection Officers.

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## **SPEAKER 6: DR. SANGEETA ROY MAITRA**

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*Dr. Sangeeta Roy Maitra* is a professor at the Hooghly Mohsin College and in this webinar extensively covered on existing divorce laws in India. Divorce is governed by the personal laws of the parties. Divorce can take place through contest that is “fault grounds”, where divorce takes place due to the fault of either of the parties. Another way of a divorce is through mutual consent. Section 13(B) of the Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954 outline the procedure for divorce on mutual consent.

Section 13(1) of the Hindu Marriage Act, 1955 outlines the grounds on the basis of which a divorce can be sought. One such ground is adultery wherein one of the parties has sexual relationship with another individual outside marriage. Adultery is no longer a criminal offence. The next ground for divorce is cruelty wherein one of the parties subjects the other party to mental or physical cruelty or has deserted the other party for a period of 2 years or more. Another ground is if a party is of an incurable unsound mind or has a venereal disease in a communicable form. Leprosy is no longer a ground for divorce after the Personal Laws Amendment Act of 2019. The next ground is if a party has renounced the world by entering any religious order and is not willing to perform his/her marital obligation then a divorce petition can also be filed.

The next ground is presumption of death wherein a party has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive. Another ground for divorce is irretrievable breakdown of marriage wherein there is no cohabitation and a period of 1 year has also passed from the date of judicial decree. Another ground for divorce is failure to comply with an order of restitution of conjugal rights.

There are some grounds under the Hindu Marriage Act, 1955 which are available exclusively to the wife, such as bigamy wherein the husband has more than one wife, rape, sodomy, failure to comply with an order for maintenance under Section 125 of the CrPC. A wife after attaining puberty also has the option of repudiating a marriage before she attains the age of 18 years.

Under the Special Marriage Act, 1954, three years of desertion is necessary before a petition of divorce is filed. Another different ground included under this legislation for divorce is imprisonment of the spouse for 7 or more years for any offence defined under the Indian Penal Code, 1860.

Grounds for divorce under the Parsi laws include non-consummation of marriage, unsoundness of mind or if the wife was pregnant with another man's child at the time of marriage.

Under Muslim law, divorce can be granted by the husband through various forms of Talaq. Talaq-e-Ahsan is the most ideal way of dissolving a marriage. 'Ahsan' means best or most proper. Under Talaq-e-Ahsan, the husband must pronounce divorce in a single sentence when the wife is in a state of 'purity' i.e. not menstruating. If the couple resumes cohabitation or intimacy, within the period of iddat, the pronouncement of divorce is treated as having been revoked. Therefore, 'talaq-e-ahsan' is revocable. Conversely, if there is no resumption of cohabitation or intimacy, during the period of 'iddat', then the divorce becomes final and irrevocable, after the expiry of the iddat period.

Under Talaq-e-Hasan, which is a 'proper' way to divorce the husband pronounces talaq three times spread over three monthly courses. After the first pronouncement of divorce, if there is resumption of cohabitation within a period of one month, the pronouncement of divorce is treated as having been revoked.

Section 36 of the Indian Divorce Act outlines the procedure for alimony or spousal support. Section 24 of the Hindu Marriage Act, uses the term maintenance pendente lite i.e. provision of maintenance pending the proceedings, and under this law, even the husband can seek maintenance.

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## **SPEAKER 7: SNEHA MUKHERJEE**

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*Sneha Mukherjee* is an advocate practicing in the Supreme Court and has been associated with HRLN Delhi. The speaker covered the topic of abortion rights in India, in the webinar.

In 1967, a special committee was formed because of the need to protect medical practitioners from legal liability incurred due to miscarriage in pregnancies. The committee submitted a report after two years and on the basis of that report, the Medical Termination of Pregnancy Act, 1971 came into force. This legislation governs abortion rights of women. In our country, a woman cannot seek abortion at anytime as a matter of right. She can seek the assistance of a medical professional to opine whether her situation permits abortion. A woman can seek abortion upto 12 weeks from a registered medical practitioner for any reason.

From the period of 12 to 20 weeks, there are only two grounds on which a woman can request an abortion. The first ground is if the continuation of pregnancy poses a physical or mental health risk to the woman. The second ground is if by continuing the pregnancy, there is a high risk of physical or mental handicap to the foetus. Section 3(2) of the Medical Termination of Pregnancy Act, 1971 outlines circumstances that allow for abortion i.e. where any pregnancy is alleged by the pregnant woman to have been caused by rape, the anguish caused by such pregnancy shall be presumed to constitute a grave injury to the mental health of the pregnant woman. The U.S Supreme Court is due to hear a challenge to the constitutionality of abortion as upheld in the case of *Roe vs. Wade*.

In 2016, HRLN represented a woman whose foetus had a physical abnormality where there was almost zero chance of survival and the pregnancy was caused due to rape. The woman was already on her 24<sup>th</sup> week during which the law does not permit an abortion. However, for the first time in the country the court allowed abortion beyond the statutory period of 20 weeks. The Court opined that the petitioner suffered from immense psychological distress as the pregnancy was a result of rape and additionally the foetus had a physical abnormality. Thereafter, HRLN took up more such cases which challenged the constitutionality of the legislation especially the gestation limit of 12 weeks. The appeal before courts is to respect the bodily autonomy and

integrity of the women. A vacation bench of the Supreme Court (J. Chandrachud) in a judgment allowed an abortion (at around 32 weeks of pregnancy) irrespective of the pregnancy being viable and held that it depends on the physical and mental health of the pregnant person.

As of today, the various High Courts across the country allow abortion upto 32 weeks of the pregnancy. Due to the recent jurisprudence, in 2021 an amendment was brought about due to which the 20 weeks limit has been increased to 24 weeks. Under the new amendment, a Medical Board (to be set up in each state) has been introduced and women are to seek permit from the Board in place of the court. There are certain issues with the setting up of Medical Boards. Firstly, it is not possible for pregnant women from different districts and villages in a state to travel and present themselves before the medical boards and secondly, setting up a Medical Board in each state shall involve allotment of budget and resources which may not be feasible.

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## **SPEAKER 8: DEEPAK SINGH**

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*Deepak Singh* is an advocate practicing in the High Court at Patna and has been associated with HRLN. The speaker covered the topic of sexual and reproductive rights of women in India, at the webinar.

The speaker spoke that there is a basic concept underlying the rights which is ‘*my body, my choice*’ and ‘*my body, my rights*’ and there is an informed choice. Women in labour experience violence at the hands of medical healthcare providers and have faced mistreatment, disrespect, dehumanized care. It is important to ensure safe and respectful maternal healthcare. Post natal care is a basic need and its compromise has led to pregnant women in more vulnerable situation.

There are different government schemes that focus on extending maternal benefits. Due to the impending lockdown, maternal healthcare has been compromised. In a case in Jharkhand, a woman was bleeding due to pregnancy complications and consequently she was slapped, asked to clean the floor and made to leave by a medical staff in a district hospital. In Madhya Pradesh, a delay in process of formalities led to the death of the pregnant woman leading to loss of life due to health system constraints. Such cases are not new and have been witnessed time and again.

Disrespectful treatment to mothers often lead to death of the foetus so securing a safe maternal healthcare should be a priority. Failure to meet standard maternal healthcare is also a challenge in our country. During labour, a woman loses her right to bodily autonomy and the capacity to make informed choices about her body and is therefore very vulnerable.

Some of the international covenants governing maternal healthcare include Universal Declaration of Human Rights, 1948, International Convention on Economic and Social Rights, 1966, International Convention on Civil and Political Rights, 1966 etc. Article 21 and Article 14 of the Constitution also governs such rights.

Article 21 protects the right to respectful healthcare. In this context, some important cases are *Maneka Gandhi vs. Union of India* [reported in AIR 1978 SC 597], *Bandhua Mukti Morcha vs.*

*Union of India* [reported in (1997) 10 SCC 549]. In *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal* [reported in (1996) 4 SCC 37] it was held that adequate medical facility is essential to safeguard right to life and it is the obligation of state to provide primary health care. In *Laskhmi Mandal v. Deen Dayal Harinagar Hospital*, the Delhi High Court held that fundamental and human right to life under Article 21 of the Constitution of India, includes the right to health (which would include the right to access and receive a minimum standard of treatment and care in public health facilities) and in particular the reproductive rights of the mother. In *Sandesh Bansal vs. Union of India* (2008), the High Court at Madhya Pradesh held that timely health care is the essence for pregnant women and protection of health and life is enshrined under Article 21. It is the primary duty of the government to ensure that every woman survives pregnancy and child birth.



## **INTERACTIVE SESSION**

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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. If the decree to nullify marriage has been passed in favour of husband then is wife entitled to maintenance. The speaker answered that divorce and maintenance are separate issues and the m maintenance is independent of the nullity of marriage.
2. Forced abortion is an offence under Section 109 of the Indian Penal Code and for instigation of abortion or miscarriage in pregnancy, a woman may register a FIR.
3. Transgender persons are not protected under pregnancy law. The law is not gender inclusive and petitions have been filed before the court.
4. In 2018, at Supreme Court a husband made a representation that he objected to the termination of pregnancy. The Supreme Court held that the foetus as long as in the woman's body was a part of the woman and the husband has no say.

## CONCLUDING REMARKS

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India is a diverse country governed by diverse personal laws. The rights of women and children are not only at constant violation but also not being actively safeguarded to the fullest extent. The webinar highlighted the various issues rampant and aggravating in the pandemic. Be it domestic violence, human trafficking, child abuse or maternal healthcare violence, the women and children are grasping to get by with the assurance of the basic rights.

The rights are essential and core for the survival not only for the survival but survival in a decent and dignified manner. The Constitution of India, special laws such as POCSO, Juvenile Justice Act, Medical Termination of Pregnancy Act, international covenants and principles, have been aimed at ensuring the protection of and granting an envelope of safety to the women and children and providing them a resort to relief.

The student representative of South Calcutta Law College gave a vote of thanks on behalf of the entire student body.

*“Our men think earning money and ordering around others is where power lies. They don’t think power is in the hands of the woman who takes care of everyone all day long, and gives birth to their children.”*

**- Malala Yousafzai, activist and Nobel Prize laureate**

# ANNEXURE A

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# ANNEXURE A

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# ANNEXURE A

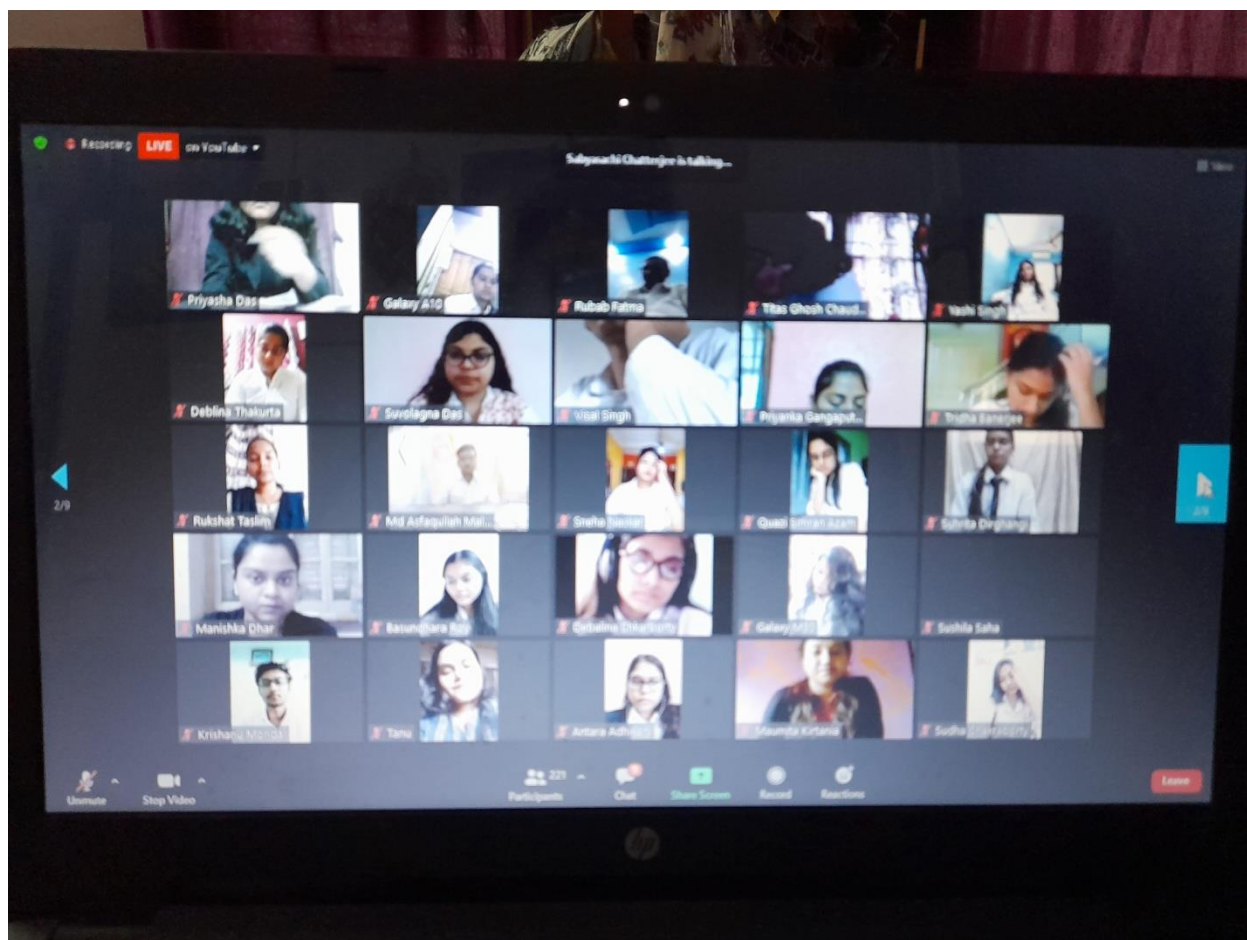
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## ANNEXURE B

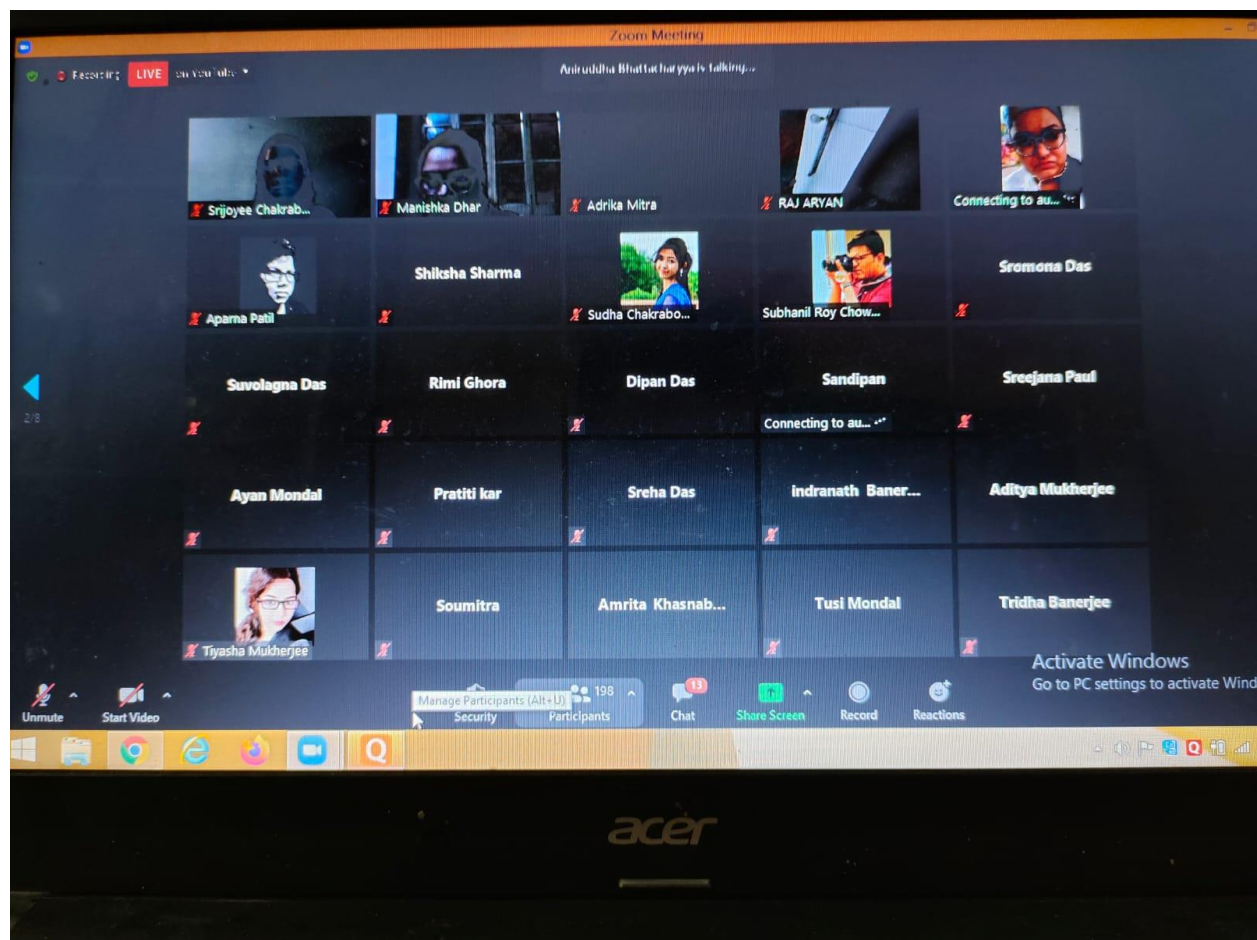
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## ANNEXURE B

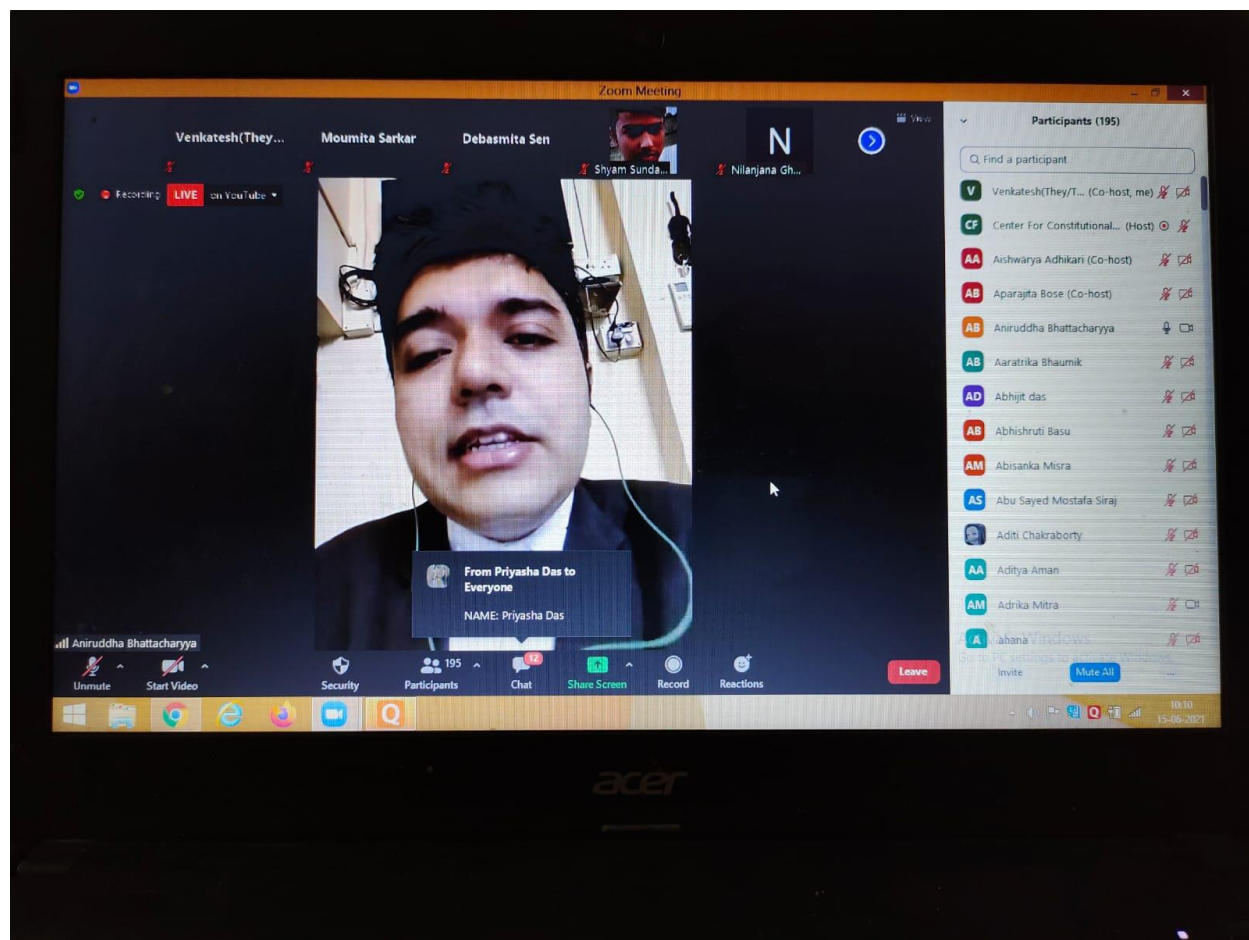
### ZOOM WEBINAR SCREENSHOTS





## ANNEXURE B

### ZOOM WEBINAR SCREENSHOTS



## ANNEXURE B

### ZOOM WEBINAR SCREENSHOTS

