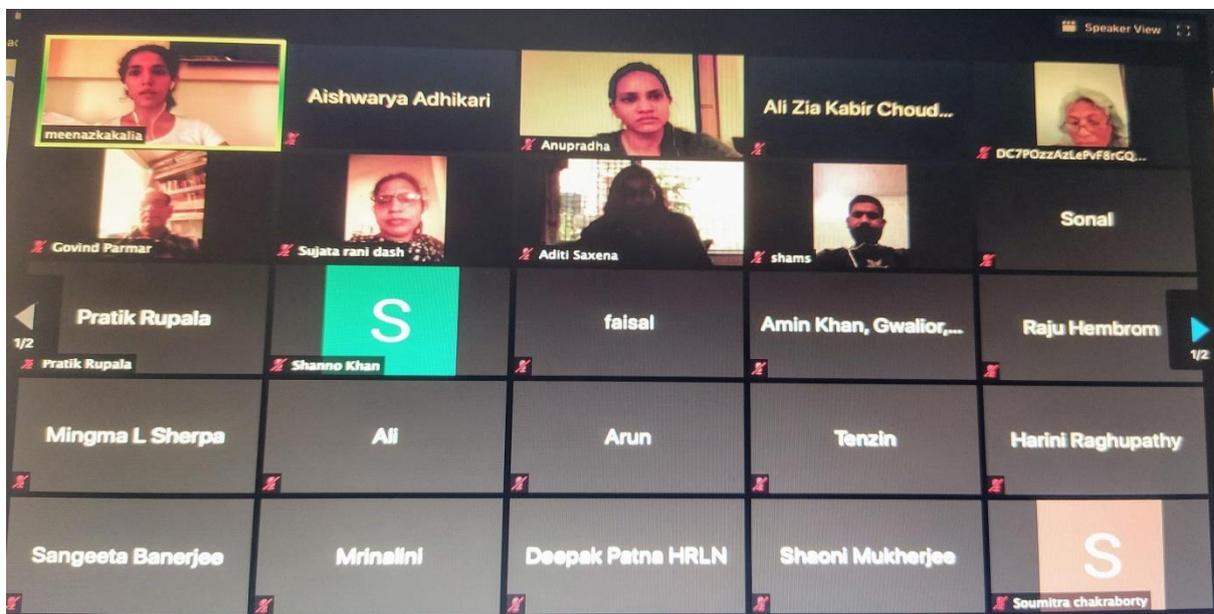


Report on
**ENVIRONMENTAL JUSTICE - INSIGHTS &
CONTEMPORARY ISSUES**

DATE: 13.05.2020
TIME: 9 AM - 12:30 PM

Written & Edited by
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Environmental Justice and Climate Change Initiative

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Schedule for the Webinar

	Session	Speaker	Time
	Introduction	Meenaz	9-9:10
1.	<u>Coasts</u>		
	The CRZ Notification - it's genesis and progressive dilution	Aditi	9:10-9:40
2.	<u>Forests</u>		
	Identification and declaration of forests; forest conservation - the legal regime	Zaman	9:40 - 10:10
	Urban forests and tree felling	Shaswath	10:10-10:30
	Forest Rights Act, land acquisition and forest conservation - Interlinkages	Omkar	10:30 – 11:15
		Indrajeet	11:15 - 11:30
3.	<u>Urban Areas</u>		
	Mainstreaming climate change considerations - Interventions into town planning	Kabir	11:30 - 12
	Vehicular emissions	Indrajeet	12 – 12:20
4.	<u>Hydro-electric projects and their ecological impact</u>		
		Anupradha	12:20 - 12:40
5.	Discussion and concluding remarks	Meenaz	12:40 - 1

1. Introduction

In the wake of Covid 19, a group of researchers and lawyers from HRLN began the process of organising a series of workshops over webinars, to begin the collective conversation around emergent issues as well as to collate all the individual work done by states. The main objective of organising these webinars was to facilitate learning and sharing of experiences of lawyers/social activists involved in litigation/relief work during Covid-19 lockdown and develop strategies for future work.

*The third in the series of webinars was a detailed discussion surrounding Environmental Justice and contemporary issues relating to the same. The meeting was organised on **13 May 2020, from 9 AM to 12:30 PM.***

Through its Environmental Justice Initiative, HRLN uses the judicial system to fight environmental degradation that primarily affects the lives and livelihood of the poor and vulnerable groups and to address the ensuing human rights violations. EJI firmly believes that the right to a clean environment is a basic human right for all, and that access to natural resources is the right of communities, such as tribal, who are primarily dependent on them.

HRLN has been working on environmental justice through litigation, consultations, and campaigns to make environmental protection more sensitive to human well-being, for the effective enforcement of environmental rights, and to provide legal support to affected communities. HRLN also aims to equip communities to take part in environmental decision-making for effective enforcement of environmental rights. One of the platforms used by the organisation to highlight various environment and related human rights violations is the Independent People's Tribunal. The IPT was formed in 1993 to conduct fair and credible investigation on matters concerning environmental and human rights violations and to provide communities, and people's movements a platform to seek redressed and policy change.

In the past, HRLN has worked on landmark environmental cases in state High Courts, NGT as well as the Supreme Court on tribal rights, silicosis and banning of asbestos in India, ban on use of certain pesticides, compliance with bio-medical wastes management, closure of brick kilns in agricultural areas, implementation of rainwater harvesting, compensation for children affected due to groundwater contamination, restoring the Dalit community's right of use to a public pond, protection of forests and wetlands, banning use of polythene and plastics in the Andaman Islands, and the rehabilitation of people displaced due to dams.

This particular webinar was intended to be an informal training/capacity building through the sharing of cases done by several of our units in the field of environmental law.

The sessions were divided based on the geographical landscapes and the unique issue related to these landscapes – coastal areas, forest areas and urban areas.

1.1 The CRZ Notification - it is genesis and progressive dilution

Speaker: Advocate Aditi Saxena

Aditi spoke about Coastal Regulation Zone notifications that came into being after long deliberations in 1981, 1982 and 1986 in India. The regulation covered several states of India and approximately 7500 kms of coastline of the country. Aditi added that the regulation had seen several significant amendments, and currently the third version of the same, being the CRZ Notification, 2018 is in operation. She stated that the idea, with which the regulation was brought into effect in 1991, has now undergone a complete change in the last 30 years of its existence. The idea of sustainable development, proposed by the regulation was unacceptable to most of the coastal states of India as it resulted in reduction of developable area as potential loss of revenue from tourism, because of which proposals were sent over the years to the Ministry of Environment and Forests seeking amendments to the strict regulations. The resultant development across the coastline, particularly in the states of Maharashtra, Odisha and Kerala had a direct impact on the ecosystem and faced severe side effects of this development. . For example, Odisha saw a rapid decrease in its coastal sand dunes, due to construction, which otherwise serves as a barrier between land and sea. The visible reduction of Fort Kochi in Kerala, to a few kilometres is an evidence of rapid constructions along its coastline.

Aditi emphasised the importance of identification of state sponsored development projects that have a direct impact on loss of livelihoods of vulnerable communities like fishermen, along the coastline. She highlighted the Supreme Court order in the matter of *Kerala Coastal Zone Management Authority v. Maradu Municipality & Ors.* Where the Supreme Court ordered the demolition of constructions along the coastline in violation of the CRZ Notification and further suggested that this could be used as a good precedent to stop illegal constructions along the coastline, in India. She spoke about the under- construction coastal road in Mumbai against which a petition was filed in the Bombay High Court. She highlighted the lack of consideration of the interests of the traditional Koli community when this project was envisaged and the resultant impact it was likely to have on their livelihood. Aditi emphasised the importance of the active participation of communities in the planning process of the projects.

2. Identification and declaration of forests; forest conservation - the legal regime

Speaker: Advocate Zaman Ali

The speaker acquainted us with the history of exploitation of the forest in India in the name of trade during the British Raj. India was known as “sone ki chidiya” because of its rich minerals and resources. The British were aware of the value and the worth of the Timber not only in the rising economic world but also strengthening their trade and economy in the world. The boats are made out of timber and in India, one can find various varieties of timber in the different parts of the states due to diverse tropical regions.

The British in order to expand their trade planned a Single value tree, where there will be only one type of tree planted, in other words, a monoculture. The speaker gave an example of the Himalayas region where one can witness the Pine trees almost everywhere. But the negative impact on the soil was highlighted by the speaker, due to the same kind of the plantation of trees, it reduces the fertility of the soil which further damages the quality. The diverse soil maintains the quality and the fertility but the economically driven mindset of the colonial had led to the maximum deforestation and degradation of the soil.

In 1865 a law was enacted and the attempt was made to systematise the use of Timber but due to high demands during the First World War and railway development program paved its way for the huge exploitation of the forest and the law was tossed in the air.

In 1927 again the attempt was made to enact the law for the forest. However this law, which is the Indian Forest Act 1927 was enacted only to control and maximise the utilisation of the Timber instead. The law was silent about the rights of the Tribes that resided within these forests settlement rights were vaguely mentioned. The speaker flagged out the lacuna in the system and the fact that though the law was enacted there was zero awareness regarding the forest rights in the Tribal areas. The tribals were not able to defend their rights due to lack of awareness about the law. The next barrier is the language of the law which is written in English.

The speaker noted the peculiar fact that although there were three laws with regards to forests in India, not a single one of them actually defines the term Forest.

- Post-independence, when the zamindari system was abolished, their grip on the lands was loosened too. In 1976, the 42nd amendment was introduced in the Constitution to curb the exploitation of the forest - the subject of the Forest moved to the Concurrent List from the State List.

In the Forest Conservation Act, there are no ownership rights for the tribal people however in 1988 the importance of the tribal and the community relation with the forest was mentioned. In T.N. Godavarnam Thirumulpad vs Union of India, the order was given on 12.12.1996 from the Hon'ble Supreme Court clarified that issue on the definition of 'Forest', it says that the forest will be defined according to the dictionary meaning and the forest will be reserved unless the grant of the Centre Government. The Commission for Environmental Cooperation (CEC) was set up to monitor the implementation of the order of the Supreme Court and non-compliance will be kept in check.

The speaker points out that one can file an environment matter in the High Court. In the NGT, the first schedule included the Forest Conservation Act but leaves the Indian Forest Act from the pool. The issue of defining forest derives from the Indian Forest Act but due to exclusion of the said Act in the First Schedule of the NGT, the power remains with the state to declare the land of the forest.

Further, the speaker discussed an important case that deals with deforestation. The case was filed against the state project that planned to turn 1200 hectares of land of Aarey into an Economic Growth Centre. The area is also known as an Urban Jungle and one can find a high number of leopards. The State Govt already commenced the deforestation in Aarey Forest. It was important first to declare the Aarey area as 'Forest' by the NGT which will not only save the Flora and Fauna also 27 different tribal communities. It was argued that the NGT has no powers and jurisdiction to adjudicate the issue. At last, NGT held that they have jurisdiction to declare the area as 'Forest' with the help of T.N. Godavarman case.

2.1. Urban forests and tree felling

Speaker: Advocate Shashwat

Advocate Shashwat mentioned the intervention of HRLN Bihar unit in the Gardani Bagh incident, which involved the felling and uprooting of 1000 trees and clearing of the forest land by the government. Shashwat mentioned that the area saw a dense population of trees which was to be uprooted following the plan of building a Patna Smart City Project.

He mentioned that on conducting a fact finding it was evident that the Gardani Bagh area served as a high pressure area for the North and Indo Gangetic plain, easing air pollution. After having collaborated with a nationwide students' organisation, called Tarumitra, a field visit to Gardani Bagh was conducted to carry forward a tree census to look at the various species of plants in the region.

After a detailed investigation, it was found that there are approximately 1000 different variants of biomass in the plantation, which is under the threat of being pulled out. It was evident via the field visit that it was impossible to transplant these rare species of biomass. thereby Moving to court was therefore the only option of safeguarding the area against construction.

He mentioned the three most important prayers in the PIL which were as follows- :

- a. Immediate conduct of impact assessment of the project on the ecosystem
- b. aggressively pressing for defining Indian 'Forest' as there is no clear definition of forests,
- c. Recognise the Right to Fundamental Rights to Trees - Shashwat mentions the Subhash Kumar Vs State order that talks about the right to life; emphasizing upon the enjoyment of pollution free air & water & importance of trees as an integral part in it.

The Patna High Court passed an order for formulation of a commission for a policy of translocation for trees. But there has been no progress made by the Commission, so far.

Among various important points that Shashwat mentioned is the problem of waste management in Bihar. He said that sustainable agriculture is an important aspect in Bihar, whereby introduction of hybrid seeds is being done without any experiment or trial run. Alongside he mentioned the large amount of vehicular emission, as some of the major problems in Bihar.

2.3 Forest Rights Act, land acquisition and forest conservation - Interlinkages

Speaker: Advocate Omkar

Omkar spoke about the matter being pursued in the Orissa High Court with regard to forest rights of the villagers in Jagatsingpur. He talked about a large number of projects being planned in forests without settling forest rights of the forest dwelling communities in spite of the provisions of the Forest Rights Act, 2006 that recognises the rights of these communities.

He also spoke about the Orissa Gram Panchayat Act which requires the Pali Sabhas to give consent before a project is implemented within the limits of the panchayat and about how this provision was often not implemented.

He spoke in particular about a large project being planned by a well-known Indian company, which would displace a large number of other traditional forest dwellers, whose rights had not yet been recognised under the Forest Rights Act, 2006, and about HRLN's planned intervention in this matter.

3. Mainstreaming climate change considerations - Interventions into town planning

Speaker 1 - Advocate Ali Zia Kabir Choudhary

Kabir spoke of the extreme geological changes that have been brought about by the human species. He stressed upon the long term trends of annual mean surface air and sea temperature increases by 0.6 degrees centigrade in the last 100 years is predicted to increase by 2 – 4 degrees centigrade. This will cause large increases in mortality during heat waves, extreme rainfall events and an increase in both floods and droughts. Rise in sea levels will threaten the coastal areas. Kabir stated that Mumbai and Kolkata, for example, would see substantial submergence and displacement of slums. Percentage of areas under drought, which increased from 10 % to 20% (1959-2009), is expected to accelerate. Temperature rises in the Himalayas by 1.19 degrees centigrade and the dramatic warming after 1970 could have catastrophic effects on India's main water lifeline – the Ganga.

Further, he stated how Urban India contributes 63% of India's GDP. 400 million additional people are projected to live in urban settlements by 2050. After the pandemic, it would be safe to estimate poverty rates at 40% against governments 15%. Slum residents are usually without water, toilets and drainage. WHO in 2016 found that India had the most polluted cities in the world. Water issues will be critical; Chennai recently went through a huge water crisis. Rise in sea levels will submerge large areas of Mumbai and Kolkata including the slums. Despite the Solid Waste Management Rules 2016, Indian cities continue to contain mountains of garbage. Most cities do not address climate change in their development plans.

Against this setup, Kabir suggested the need for improving urban planning and actively taking part in the planning procedure as a recourse to counter as well as engage in the populous discourse of climate change in India. He mentioned that as an organisation HRLN has been lagging behind in addressing these issues and has only actively participated in securing housing rights of communities by securing the rights of the communities against evictions. The new approach to address the emergent issues of climate change should be to actively engage with the communities and urban planners and bridge the gap that it creates. He states that we must engage in the implementation process thereafter citing an example of the Kathputli colony case, whereby along with demand for rehabilitation there is a demand that the community be involved in the urban planning process, equally.

Speaker 2 – Indrajeet

The speaker pointed out the challenges in the criminal proceeding and lodging complaint in the matter related to the environment. In order to file a complaint, a prior one-month notice has to be served in such matters. The evidentiary value was questioned in the later stage and a lot of confusion arose. There is a huge confusion in the application of the law, for instance, Evidentiary values in the proceedings.

The speaker highlighted the challenges in the law. In West Bengal, the hybrid rickshaw which has an engine similar to a motor, the tires are different from the traditional cycle and the e-rickshaws create a commotion in the air, and are not included in the Motor Vehicle Act. The law is silent in such areas. The NGT is not functioning properly in the State and the procedures are more complicated.

Likewise, the Crematorium grounds are not properly maintained, the speaker faced challenges from the authority as the State does not want to take any action on such matters. There is a lack of understanding amongst the lawyers and the judiciary in the cases of environmental issues. The big shot lawyers who deal with the big companies in the NCLT (National Company Law Tribunal) forum are the ones who also represent in the National Green Tribunals. Due to long dates, there is a high risk of tampering with the evidence in the proceeding.

There are a few identical problems, first the Dumping of the waste in the water bodies which gravely contaminates the drinking water. The cases filed in the courts were being sent to the NGT hence, it consumes a lot of time in the procedure. The State discharges the matter sending it to the Municipalities of the said areas.

The speaker suggested that it is of prime importance to identify new activists and to make them understand that the forest dwellers are indispensable parts of the forest. It was further advised that the workshop should be organised to empower the young lawyer in the matter of “How to file a criminal complaint in the environment issues”.

4. Hydro-electric projects and their ecological impact

Speaker: Advocate Anupradha Singh

Our last panellist discussed the environmental impacts of the Tawang Hydro Electric Projects in Arunachal Pradesh and the 2006 Environment Impact Assessment (EIA) notification. Before commencing with the case, the speaker provided the history of the evolution of sustaining the environmental issues by laws. The initiation was started in the U.S.A. by turning every project related to the environmental issues into the idea of sustainability. The prior approval was made mandatory to keep check and balance on the companies. So the idea of Environment Clearance was made indispensable was adopted by India in the form of the Environment Impact Assessment Notification, 1994 (EIA Notification) which was subsequently replaced by the EIA Notification, 2006. The EIA Notification, 2006 categorizes into two categories: Category A and Category B. There are 39 projects which need clearance from the appraising authorities. For category A projects, clearance will be grant by the Central Government and it includes projects like Hydro-Electric dams, large ports etc. and in Schedule B, the respective State Governments has to grant the clearance.

The speaker highlighted the challenges faced by the local citizens due to the Hydro projects in Arunachal Pradesh. There are 160 Hydro Electric projects alone in the State. The river is the main source in such projects and for the local dwellers as well. The tunnelling in the mountains will drastically impact the environment. To offer an example, hydroelectric projects contribute to 4 % of the greenhouse gases.

In order to understand the procedures of the law in the environment matters, the speaker acquainted us with the 4 steps or stages of EIA.

1. Screening

The purpose of the screening is a preliminary step to investigate the negative and positive impact of the proposed project.

2. Scoping

The scoping measures the size of the project and evaluates the extent of potential environmental impacts. It includes the **Term of Reference**, which plays a crucial role in the reporting process of the company.

3. Public Consultation

At this stage, it includes the rights of stakeholders (Public) to reject the proposed in the vicinity or area.

4. Appraisal Stage

This is the final stage where the Expert Committee of respective States or Centre approves the project.

The speaker moves further to explain the challenges and the repercussions of the said projects on the River Basin of Tawang, Arunachal Pradesh. She discussed two projects: Nyamjang Chu River and Tawang Chu River.

1. Nyamjang Chu River

The projects in Tawang river basin has a history of bloodshed, the innocent monks sacrificed their lives in the course of saving the environment, which was sacred for the locals. The monks and the locals rejected the said projects. The NGT set aside environmental clearances, in the case of Save Mon Region Federation vs. Union of India & ors, filed before NGT. There were faulty terms of reference from the side of the Company. As mentioned above, the scoping stage is of prime importance as it prepares the report on the impact of the project. The company hides the fact of wildlife-endangered species in their report, which put the lives of the species unreferred and to the extent of extinction.

In addition, the Cumulative Aspects, the other projects were simultaneously commenced in the vicinity, it was not mentioned either in the Terms of the Reference. Such omission by the company has created tremendous repercussions in the vicinity.

2. Tawang Chu River

The case filed under the Land Acquisition Act in the Hon'ble High court. The acquisition of land was challenged by the petitioner, as it claimed by the petitioner that NOC which was obtained from the Gram Panchayat according to the Forest Rights Act was faulty. The said projects have affected the 16 villages, out of which 8 have protested.

The speaker highlighted the effects of the dams in such areas. The Chief Minister which belongs to the BJP party has announced that Arunachal Pradesh has capacity to hold 70, 000 Mega Volts whereas the CM completely ignores the fact that the said vicinity comes under the Zone 5 area which has maximum risk of earthquake. The rocks are soft which leads to the high risk of landslides. If the dams could not hold the water, it would change the natural course of the river and aquatic fish cannot survive the flow of the water. There will be no vegetation in the area because of the soil erosion.

No one can deny the displacements that occur in the process of making the country great. The people are forced to flee the native place and it affects socially and culturally. Either the compensation is not paid according to the law or there was no compensation paid at all.

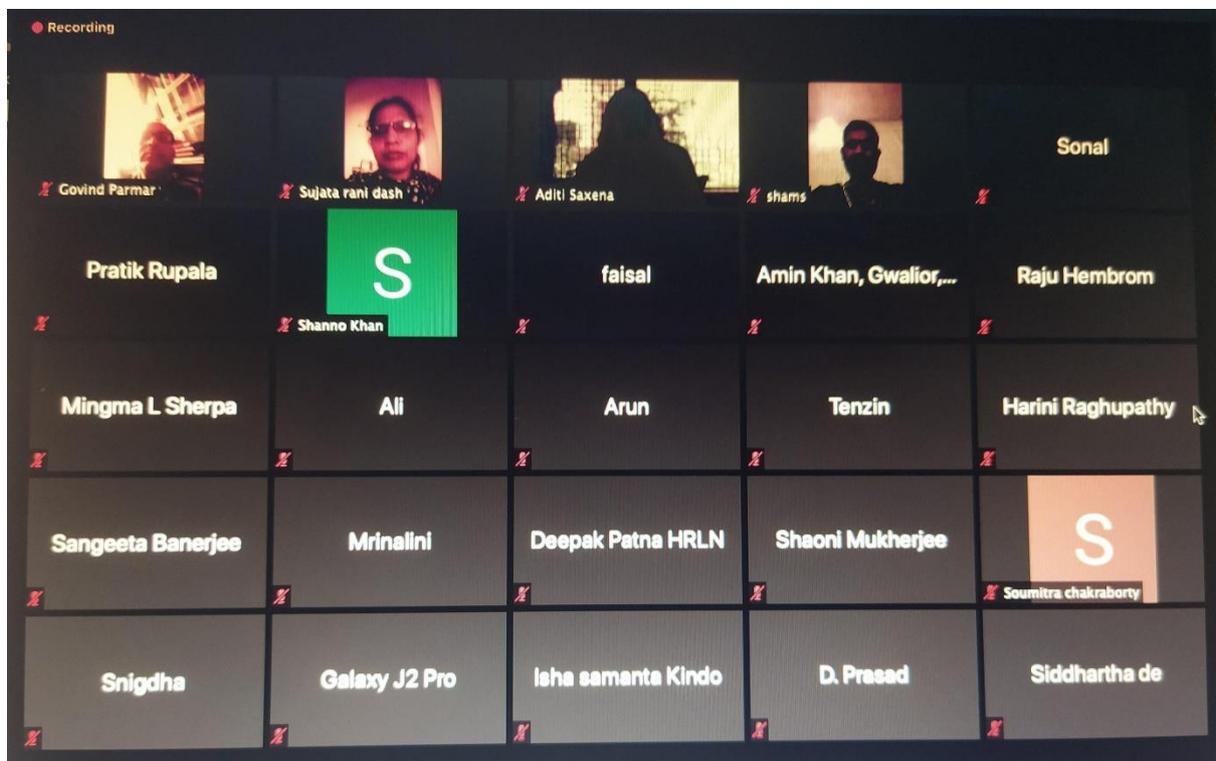
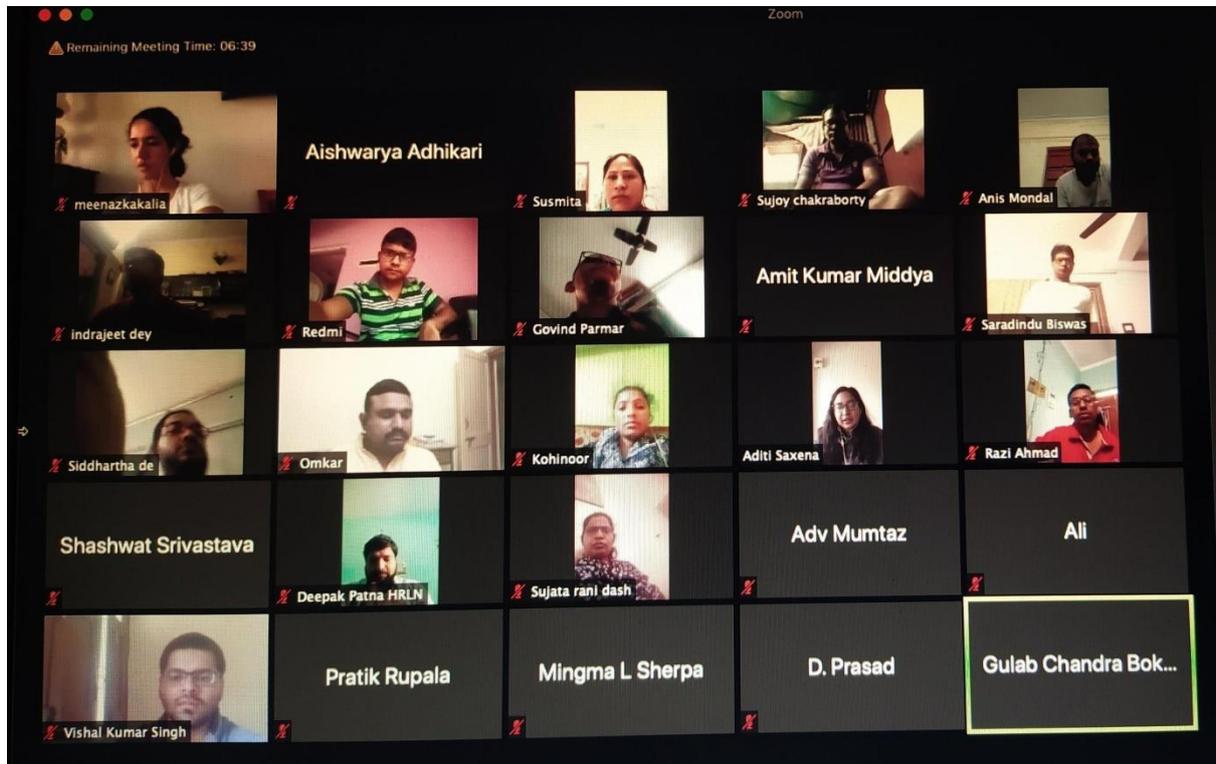
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Pictures



Recording

