

Report on the webinar on

Immigration, citizenship and Human Rights.

Date: 15th November, 2020,

Time: 3.53 P.M -4.23 P.M



Prepared by:- Shah Faisal, Advocate.

Schedule for the Webinar:

Time	Speaker
3.53-3.56	Shah Faisal (Moderator)
3.56-4.17	FazalAbdali
4.17-4.31	NabeelaTalib
4.31-4.41	Zahra Umar
4.41-4.51	DebasmitaGhosh
4.51-5.20 (Questions, Answers and group discussion)	

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4.	Irregular Migration	Ms. Zahra Umar
5.	Scenario of citizenship in the state of Assam	Advocate DebosmitaGhosh
6.	Dysfunctional operations of foreigners' tribunal in the state of Assam	Advocate Tariq Adeb

Sr. no.	Participants	Email/Mobile No.
1.	Shah Faisal	9797867101
2.	Nabeela Talib	
3.	Syed Musaib	8130619419
4.	Zehra	
5.	Safina Nabi	9650297633
6.	Debosmita	
7.	Abdul Batin	
8.	Eliza	9999106001
9.	Heena	7006606892
10.	mansab	8825024908
11.	saher	9797884848
12.	Fazal Abdali	9891463167
13.	Shahzeb khan	7006928944
14.	Yamina	
15.	Vishal	8238897100
16.	manisha	9599524321
17.	rabiya	9682622554
18.	Javed	7889665644
19.	iqbal	7780870290
20.	Saqib	9149894339
21.	yawar	8494096167
22.	Nikhil	8808526743
23.	Gaurav	9742965091
24.	Mahek	9906453991
25.	ashfaq	7006110775
26.	aqib	7006707886
27.	danish	8713904717
28.	Faheem	7006849274
29.	nahida	7006789647
30.	aazima	9541447821
31.	Omair	7889802792
32.	zohra	7006904001
33.	mudasir	7006930172
34.	zahid	7210525656

INTRODUCTION:-

In contemporary times what we see is that once the citizens of a particular state/country are driven out from their country on account of being a follower of particular faith, he or she is not normally accepted by the host country, doors of generosity are not being opened rather a cruel or inhuman mode is opted by the host country by throwing the persecuted person into the immigration or detention centres. In India such suppressed souls find places in jails thus completely taking away their freedom and liberty. India although is not signatory to the convention of 1951 on refugees but India being a constitutionally governed country cannot shy away from the democratic principles of humanity as clearly mentioned under article 21 of constitution.

Advocate Shah Faisal:

Began the session by introducing the participants.

Advocate Fazal Abdali:

Gave a talk on "Alternatives to the detentions and refugee law". India, not being part to any international Refugee conventions but has hosted many refugees, while at the same time huge number of refugees are detained. India at international level boasts about the hosting of large number of refugees and at the local level they are saying that India has not signed 1951 convention on refugees, it leads to a lot of trouble for the people who came to India for asylum. In essence, a large number of refugees are being detained on the pretext that they don't hold valid documents. He further states that, the cards that are being issued by UNHCR are not being recognised on the pretext that India is not signatory to any refugee convention.

He explained the hue and cry that was raised in 2017 in response to the coming of Rohingyas in India on account of their persecution in Myanmar, how false statements were also made regarding the number of refugees (Rohingyas) by various politicians. Some self-calculated figures were made that 40 thousand of them have entered in India. First of all the facts were totally wrong and misplaced. According to UNHCR data, there are around 16994 Rohingyas who are registered as refugees or those who are in process of seeking asylum. Secondly government is making claims that India has not ratified 1951 convention on refugees, so they are free to do anything with refugees.

The confusion and contradiction within the states' actions was reflected by security forces allowing the Rohingyas to walk into Indian Territory then arrest them by the state police. He also recalled his personal experience about litigation he filed in Assam regarding the subject in discussion. The governments' silence over the issue and operation of the Foreigner's tribunal, political motives and bias was also observed by him. Rohingyas while fleeing the persecution either go to Bangladesh or they enter into the India via West Bengal. The BSF (border security Force) allows them to enter into the territory and later they are detained by

state police on ground that they don't have the valid documents. The state police doesn't understand the meaning of refugees since they are not properly sensitised by the local authorities.

We have also approached the supreme court challenging the illegal detention of rohingyas but the supreme has only issued the notices to the various states, directing them to file the reply. We have prayed before the court that rohingyas are the asylum seekers and they are entitled to the basic human rights and they have the protection under constitution of India, international treaties and conventions.

In Assam, the many people have been declared as foreigners by the foreigners tribunal in a very arbitrary manner. Foreigner's tribunal works in a haphazard and carries a political agenda. As per the convention against torture, these people cannot be deported to the country of their origin. The refugees (rohingyas) cannot be deported to the country of their origin because they being refugees are protected by the principal of non-refoulment, under various treaties and conventions, the principal of non-refoulment has attained the status of jus-cogens. When anyone who is an asylum seeker has been detained for indefinite period of time, then it amounts to torture.

Article 21 of the Indian Constitution says that everyone shall have right to life and personal liberty. When someone flees persecution, in order to save his life and liberty, now you cannot take that right away by merely saying that you have lacunae in municipal law. We don't have refugee law in india, we don't have any asylum law in india. If you look what supreme court has held in Vishaka's case and Gramophone Case, the supreme court of India has held that if there is lacunae in municipal law, look for the international law. The practise of alternative to detention has been used as a policy by more than 15 countries, why can we use it? Now the question is whether, the refugees can be deported back to their country of origin if you release them, the answer is very simple, you must ask the released ones to make a mandatory reporting after every 15 days in nearest police station. The punitive policies of the government must change and alternative to detention is should be considered by the government as practise.

He also highlighted UNSC's statement about dealing with immigrants, i.e. 'detention to be the last resort in dealing with the immigrants'. The absence of detention centres has translated into putting the refugees up in jails with convicted criminals.

Ms.NabeelaTalib, Lecturer, Oxford Brookes University.

Nabeela Shed light on her experience and professional background in the field of social work and she also pointed out that UK being largest host to refugees in EU, and its cold shoulder towards the refugees.

Immigration centres in UK function like a prison. In UK within EU there is no time limit for detention, so the people can find themselves in detention for indefinite period of time. This can toll on people's health especially when you don't know what is going to happen in your case, it eventually leads one to torturous experience. Asylum seekers are the most common categories of people who are in detention in UK.

Foreign National Criminal, normally are those people who don't have British citizenship. Once they commit any crime, they found themselves in prison for 12 months or more. After completing the sentence in prison, they are sent to immigration centre and finally they are deported back to the country of their origin. It amounts to double punishment, first a person serves his sentence in prison, then sent to immigration centre and finally deported to his country of origin. She further states that there is perception in UK that immigrants are threat to national security and they take over the jobs from British nationals. The detention centres in UK are located in far flung area so that immigrants remain out of mind of British nationals.

She also explained that the social work in general is not given the considerable importance in its proper functioning but rather being an arm of the state. She explained how immigrants are kept in prison for an indefinite amount of time without any proper sentence for petty crimes to the crimes of moderate degree in contrast to the citizens of UK serving sentence for lesser time for heinous crimes. She also explained that the detention centres housing the "illegal immigrants" are remotely located therefore keeping them out of people's minds.

Ms.ZahraUmar:

Gave her talk in the light of her dissertation i.e. 'European Union's Legal framework on Irregular Migration', explains it as punitive, rather than rights based approach to migration based governance and it is totally against the international Human Rights law. In EU, the irregular immigration is criminalized which in essence institutionalizes expulsion. The violation of these immigration laws is being considered as against the sovereignty of state. The criminalization of irregular immigration is condemned by various human rights bodies worldwide.

In EU there is still a state of confusion over the definition of 'illegal immigrants', the existing international laws and treatise being favourable to the refugees, while on the ground situation being contradictory. She also explained that states see migration as threat to their sovereignty especially after the 9/11 attacks in US. The EU environment has never been warm for the migrants after 9/11 attack. There is this perception that stringent laws are necessary for stopping the migration.

AdvocateDebasmitaGhosh:

Gave her talk on the topic “scenario of citizenship in the state of Assam. Explained first the Art 5 of the Constitution Of India and section 6(A) of Citizenship act which was enacted after Assam accord 1985. “

Debosmita states that, if a person who came to India before 1.1.1966, that person will be declared as Indian national but if a person who has come to India between 1.1.1966 to 24.03.1971 will be declared as foreign national whenever tried by the foreigners tribunal. The person who comes in between 1.1.1966-24.03.1971 has to register himself before the FRRO. The person once declared as foreigner, he or she will be barred from casting vote for 10 years. But the present trends are different, everyone is being harassed especially people from minority community because they are the people who come from poor back ground they don't have documents. Even on smaller issues like if there are age discrepancies in voter id and other documents, people are being declared as foreign national by tribunal. Only poor people are being targeted and harassed on the pretext of being a foreigner. As per sec 9 of foreigners Tribunal Act burden of proof is shifted to the person who held to be a foreigner. Presently, we have 100 tribunals in the state of Assam dealing with the such cases. The people who came to india in 1964 after fleeing communal tensions in east Pakistan were rehabilitated by the government in assam. These people are also booked by the foreigners Tribunal.

There is the special provision regarding the citizenship in Assam, pointed out contradictions in the law with examples. She also pointed out about the discrimination being done on the basis of faith and class of the migrants. A rise in the number of foreigners' tribunals was also made.

Advocate Tariq Adeeb:

Reflected on the dysfunctional operations of foreigners' tribunal in the state of Assam, the improper appointments of the bench with political bias was pointed out by him.

Conclusion

The webinar was concluded with group discussion regarding HRLN's proactive role in contesting a PIL brought about by a politician in Jammu demanding the evacuation of Rohingya migrants from the erstwhile state of J&K.

The HRLN Srinagar played a proactive role in dealing with the cases of refugees especially the people from rohingya community are being targeted by the government and booked under the preventive detention laws