

**Report on Amicus Curiae/Legal Aid Counsel Interaction Program**

*Organised by Studio Nilima: Collaborative Network for Research and Capacity Building in collaboration with Gauhati High Court Legal Services Committee and Assam State Legal Services Authority*

**02.03.2019**

**Resource Persons:**

1. Mr. Justice (Retd.) Brojendra Prasad Katakey, Member, Governing Council, Studio Nilima and Former Judge, Gauhati High Court
2. Mr. Satyanath Sharma, Member Secretary, Assam State Legal Services Authority
3. Mr. Nilay Dutta, President, Studio Nilima and Senior Advocate
4. Mr. Ziaul Kamar, Senior Advocate
5. Ms. Meenakshi Sharma, Deputy Secretary, Assam State Legal Services Authority

**Name of Advocates:**

1. Ms. Rectuja Dutta Bhuyan
2. Ms. Rita Boro Bora
3. Ms. Sumati Chakraborty
4. Ms. Ritamoni Goswami
5. Mr. Subhajit Banik
6. Ms. Runmani Deka
7. Mr. Dipankar Bagchi
8. Mr. Rajib Chakraborty
9. Mr. Kumar Manoranjan Haloi
10. Mr. Ujjwal Kumar Das
11. Mr. Rajib Deb
12. Mr. Kishore Kalita
13. Mr. Kamal Kishore Goswami
14. Mr. Ujjal Choudhury
15. Dr. Bibekananda Gogoi



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At the outset Justice (retd.) Brojendra Prasad Katakey addressed all present and welcomed everyone to the session. He stated by reminding all present that the constitutional ideal of 'justice to all' has not been fulfilled. Litigants are mostly indigent in both criminal and civil cases. Most of these litigants will never be able to afford the best legal representation in terms of money. The purpose of the *amicus*/Legal Aid Counsel (hereinafter referred to as L.A.C) is to plug this gap, which in itself is a tremendous responsibility. While the *amicus*/LACs have been putting in their honest effort, the objective of this program is to encourage and facilitate this effort so as to provide better justice delivery.

It is without a doubt that refresher courses from time to time are required for legal professionals and they go a long way in strengthening the system. On his own experience with *amicus*/LACs, Justice (retd.) Katakey mentioned that his experience with the present set of *amicus*/LAC has generally been positive. However, it must also be kept in mind that the courts tend to be antagonistic in cases where the *amicus*/LAC are not prepared with their briefs. Often there is a practice of handing down sentences on the basis of 'period undergone' without delving into the specifics of the case. Interactions of this nature will lead to an exchange of ideas and knowledge which will be beneficial even for the resource persons.

Mr. S.N Sharma, Member Secretary, Assam State Legal Services Authority (hereinafter referred to as 'ASLSA') welcomed Studio Nilima's step to arrange this meeting. It is important for all the stakeholders to work together in this process. ASLSA is aware that the *amicus*/LAC have been working for society in return for a nominal fee and he expressed gratefulness for this. Mr. Sharma expressed his thankfulness to Mr. Nilay Dutta for ensuring that the goal of social justice is being met through these programs. It is also important to remember that the obligations under Advocates Act are paramount and connected with social justice. In concluding his opening remarks, Mr. Sharma mentioned that he is happy that Studio Nilima has stepped in to aid the ASLSA's mandate of achieving social justice. It is also important to mention that judicial officers must also have an open mindset when pursuing statutory mandates.

Mr. Nilay Dutta, President, Studio Nilima and Senior Advocate began his opening remarks by describing the goal and purpose of Studio Nilima which is named after Mrs. Nilima Dutta, poet and humanist. While Studio Nilima is focused on research and capacity building, its wing Pratidhwani works on legal aid and awareness with a concerted focus on correctional homes and peripheral areas. In course of the legal awareness work, Justice (retd.)Katakey, Justice (retd.) Biplab Sarma, Mr. R.C Borpatragohain, Advocate General,



Assam along with Mr. Dutta have visited several areas of Assam including the Rabha community.

He referred to a particular case in the correctional home in Morigaon Jail where a woman informed that she could not trace her jail appeal. On enquiry, it was found that the appeal had been dismissed but the information never reached the correctional home. There had been an information gap of almost 8 months. Following this information, Studio Nilima preferred SLP in the Supreme Court and this state of affairs was submitted before the Court when praying for condonation of delay. The Bench was surprised and condoned delay along with issuing notice in the matter. The Supreme Court in *Reena Hazarika v. State of Assam* as reported in 2018 SCC OnLine SC 2281 finally granted acquittal but also made certain observations in para 19 and 25 which have ramifications for legal services delivery mechanism.

This observation was brought to the notice of the Chief Justice of the Gauhati High Court who had convened a discussion with Justice (retd.) Katakey, Mr. Dutta and Mr. Apurba Kumar Sharma. The proposal emanating from that discussion was today's session with the objective of understanding the issues of the amicus/LAC. The relevant observations in *Reena Hazarika* on legal aid and appreciation of 313 were read out were also read out.

The Gauhati High Court's heritage has been built on the bulwark of a strong professional reputation which has been acknowledged by several C.Js who came from different High Courts. In that context, it becomes important for the amicus/LACs to keep in mind that Article 22 read with Article 39A vests additional responsibility upon them. Experience as amicus/LAC also leads to professional development due to the wide experience these briefs can offer. He also cited instances on his own experience as an amicus.

This was followed by a discussion on the paperbook which had been circulated prior to the session for the purpose of a simulation which was moderated by Mr. Ziaul Kamar, Senior Advocate. Before beginning the discussion, Mr. Kamar dealt at some length on the some of the issues afflicting delivery of legal services in the state especially in context of the SC judgement in *Reena Hazarika*. He referred to the fact that Section 303 and 304 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') provides that in State cases, legal aid will be provided only in the Court of Sessions. He expressed that in his opinion Magisterial Courts must also be included within the ambit of Section 304 CrPC. As such, he made a request to the ASLSA to place this issue before the High Court. There are judicial pronouncements to the effect that LAC should be available to the accused during magisterial stage itself.



There are also certain alarming patterns which are evident in practice. One such example is the manner in which persons from the weaker socio-economic stratum tend to make more confessions under Section 164 CrPC than people from a better socio-economic background. He also expressed that while the law relating to Section 313 CrPC had been laid down in *Reena Hazarika*, it would be more appropriate to direct for fresh recording of Section 313 CrPC statements instead of making non-appreciation of irregularities in 313 CrPC statements a ground for acquittal.

After these comments, the discussion on the case simulation started where the facts of the case were discussed in the beginning. This was followed by a detailed discussion on the crucial aspects of the case. This included the law on confessions, expert opinion under the Indian Evidence Act, appreciation of medical evidence, forensic evidence and also recent developments through judicial opinions. An example of this was the recent development on the point whether investigating officer can also be the informant in the same case (in *Mohan Lal v. State of Punjab* as reported in AIR 2018 SC 3853 and *Varinder Kumar v. State of Himachal Pradesh*, CrI. Appl. No. 2450-2451 of 2010). Through this discussion both Mr. Dutta and Mr. Kamar cited instances from their experience to illustrate these issues. Mr. S.N. Sharma also participated in this discussion drawing on his experience as a judicial officer and offered an important perspective. Mr. Ujjal Choudhury, Mr. Sudipta Banik, Ms. Rita Boro Bora, Dr. Bibekananda Gogoi and some other amicus/LACs participated in the discussion.

At this point, Mr. S.N. Sharma mentioned the fact that most of the amicus/LACs are dealing with clients based in different jails which can often be an issue. He referred to an instance where Lokur J. gave direction for an accused to be brought over to Guwahati to consult with the amicus in the case. An acquittal was also secured by the accused subsequently. He is of the opinion that in cases the amicus feels the need for consulting with an accused lodged in an outstation jail, they may request the Court to allow them to access video conferencing facility with the jail. There was reference to a judgement on this point by Adarsh Goel and U.U. Lalit JJ. which would be subsequently circulated among the lawyers present.

This was followed by a discussion where it was resolved that some suggestions would be made to the Hon'ble High Court based on today's discussion which would include provision of standardized access to video conferencing facilities for the amicus/LACs through the Registry as facilities already exist in the jails. ASLSA informed the meeting that they have already written to the Inspector General of Prisons regarding this aspect. Mr. Dutta also suggested that amicus/LACs may also take personal initiative in visiting correctional



homes by merely addressing an application to the Inspector General of Prisons. On the basis of Article 22(1), the Court takes the agency of the accused and appoints an amicus as the 'practitioner of choice'. It would therefore be a violation of fundamental rights if any amicus/LAC is prevented from meeting their client in jail.

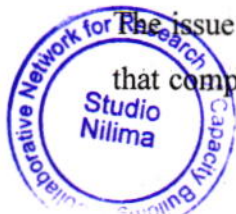
At this point, several advocates in the meeting pointed out the issues related to documentation. Most of the briefs especially in Foreigner Tribunal cases only contain the photocopy of the impugned judgement while there exists a guideline directing advocates to contact concerned Jailor with regard to other documents. However, in most cases Jailors are not able to provide the required documents.

Another issue being faced is the one relating to allotment of cases. Jail appeals are allotted with only the names of the party while the phone numbers of the concerned parties are not given. In some cases, writs in Foreigner Tribunal matters which have been dismissed by the Hon'ble High Court are re-allotted to the amicus. Mr. S.N Sharma stated that in cases where documentation or access to the same becomes a problem, the concerned amicus/LAC may address a letter to the ASLSA who will then forward the letter to the concerned DLSA thereby ensuring an expedited response. On the issue of re-allotment, Mr. Sharma stated that in several cases DFNs have no knowledge that their writ has been dismissed by the Hon'ble High Court and submit their names to jail visiting lawyers/DLSA members as fresh cases. In such cases, the concerned amicus/LAC may intimate the ASLSA which will take required action.

Mr. Dutta pointed out that the information gap between the amicus/LACs have to be addressed by some institutional mechanism. Mr. S.N Sharma suggested that these conditions and protection may be inserted on the appointment letter in consultation with the *amicus*. In most cases, a delay is caused while waiting for paperbooks. Mr. Dutta suggested this can be expedited by the advocate making a paperbook from a list of pre-decided documents which was provided during the meeting.

There are also several issues within the jail itself. The monthly inspections conducted by the District Judge is a powerful tool which has been used to great effect by proactive judges who have taken an active interest in the welfare of the correctional home, as in the case of Jorhat. However, instead of being overly reliant on jail authorities it is important to strengthen the system of legal aid clinics within the jail through the DLSA because the jail authorities are already burdened by several statutory mandates under the Assam Jail Manual.

The issue of bail and high surety amounts also figured in this discussion where it was noted that compliance of Section 436A CrPC is not the only solution. Rather the parameters in the



NALSA SOP for UTRCs which was adopted by the Hon'ble Supreme Court in *Re Inhuman Conditions in 1382 Prisons* must be focused on to ensure that this issue is dealt with at the jail itself.

Mr. S.N Sharma described the mechanism of jail visiting lawyers who visit jails and collect the names of parties and details of cases which need to be pursued through the legal services mechanism. Jail visiting lawyers are supported by the Para Legal Volunteers (PLV) who are inmates. These cases are collected by the DLSA who subsequently allots them to the LACs. This was followed by a discussion on payment of fees of the amicus/LACs where it was noted that some standardization in prompt payment of filing expenses for LACs may expedite the process.

Ms. Rita Boro Bora, Dr. Bibekananda Gogoi, Ms. Reetuja Dutta Bhuyan, Ms. Runmoni Deka suggested that these sessions should be continued for a more focused engagement and training in the coming days. The meeting therefore concluded with the resolution that these sessions would be continued in the future in a batch by batch format. Subsequently, the interested amicus/LACs from different batches would be consolidated and involved in a more specific training and knowledge sharing setup.



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