

**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.

