

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

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

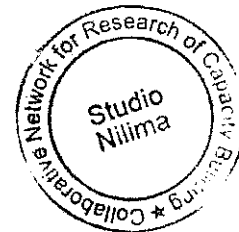
16.03.2019

**Resource Persons:**

1. Hon'ble Mr. Justice Suman Shyam, Hon'ble Judge, Gauhati High Court and Chairman, Gauhati High Court Legal Services Committee
2. Hon'ble Mr. Justice (Retd.) C.R Sarma, Former Judge, Gauhati High Court and Upa-Lokayukta, Assam
3. Mr. Nilay Dutta, President, Studio Nilima and Senior Advocate, Gauhati High Court
4. Mr. S.N Sarma, Member Secretary, Assam State Legal Services Authority
5. Mr. Mridul Kumar Kalita, Registrar (Vigilance), Gauhati High Court
6. Ms. Meenakshi Sharma, Deputy Secretary, Assam State Legal Services Authority

**Name of Advocates:**

1. Ms. Krishnamoni Phukan
2. Ms. Susmita Kanungoe
3. Ms. Bijita Sarma
4. Mr. Mridula Deori
5. Mr. Jasadhir Das
6. Mr. Uday Singh Borgohain
7. Ms. Dipanjali Deka Borpujari
8. Mr. Abhinay Kr. Gupta
9. Mr. Mrinmoy Dutta
10. Ms. Sangeeta Khataniar
11. Mr. Bhaskar Baruah
12. Mr. Jogesh Ch. Roy
13. Md. Shahinur Islam
14. Mr. Khanindra Lahkar
15. Mr. Sunil Agarwal
16. Mr. Binod Kumar Singh
17. Ms. Rita Das Mazumdar



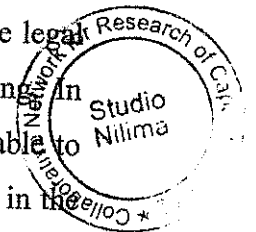
18. Ms. Purnima Baruah Bordoloi
19. Mr. Abhijit Bhattacharya
20. Mr. Jahidul Islam

At the outset, Mr. Nilay Dutta welcomed everyone present to the interaction program. In providing the context for organizing such an interaction in collaboration with the Assam State Legal Services Authority (hereinafter referred to as 'ASLSA') and Gauhati High Court Legal Services Committee (hereinafter referred to as 'GHCLSC'), Mr. Dutta discussed the recent judgement of the Hon'ble Supreme Court in *Reena Hazarika v. State of Assam* as reported in 2018 SCC OnLine SC 2281. It is imperative for us to note two main observations from this case with respect to legal services. Firstly, the fact that there exists a lacuna when it comes to communication of dismissal of jail appeals to correctional homes and secondly, that the Supreme Court has forwarded certain observations on legal services in this present case.

Subsequently, the matter was discussed with the Hon'ble Chief Justice and this present program for interaction between advocates involved in providing legal services under the ambit of the Legal Services Authorities Act, 1987 as *Amicus curiae*/Legal Aid Counsel (LAC) and resource persons has been organised. The ultimate objective of this program is therefore to enhance and facilitate the effort of the amicus/LACs to provide better justice delivery to disadvantaged sections of society.

The idea for the present program is to provide a platform for knowledge sharing and skill enhancement. This is to be done through a case simulation based on a paperbook (which had been made available to the participants previously) for which ideas for preparing effective criminal defences would be brainstormed. Through this discussion, key law points which generally present themselves in criminal appeals would also be deliberated upon. In concluding his opening remarks, Mr. Dutta welcomed both Justice Suman Shyam and Justice (Retd.) C.R. Sarma and requested Justice Shyam to address the participants present.

Justice Shyam welcomed everyone to the interaction. He commenced by stating that in his 19 years in the profession and 4 years on the Bench, he had not experienced a single day which was not a learning experience. Constant learning is a part and parcel of the legal profession. There are two kinds of learning: general learning and assisted learning. In general learning, a person will learn merely by being part of a system. This is available to everyone and comes to one's aid unknowingly. The other is assisted learning which is in the form of the program being held today. Many of the participating lawyers would know by personal experience that learning in the profession has been traditionally been in the domain



of the senior's chamber. But with the increase in number of junior lawyers this will not remain a sustainable model for the future. The question regarding an alternative to this model has been plaguing thinking minds for long.

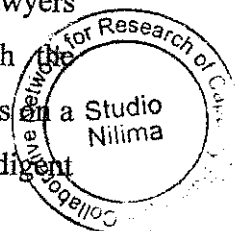
The purpose of the today's workshop is to aid in skill development for advocacy. In workshops which utilize assisted learning there is always a definite goal. As opposed to the learning in a senior's chamber, there is a user-friendly atmosphere in programs like this which the advocates must make good use of. It is also commendable that stalwarts like Mr. Dutta have come forward to develop these programs which is yeoman service for the profession.

As society changes in all aspects including crime, the courts are consequently required to deal with the changing face of society on a day to day basis and ensure justice delivery. The most important resource to achieve this end is undoubtedly the Bar. To ensure that the present quality of this process is upgraded can only be achieved by structured learning. It is imperative to note that the criminal process demands a thorough understanding of the first principles of law. A day would come when practice would not be feasible for a lawyer who has no understanding of the first principles of law. There is no scope for lay lawyers in this process. There are three things which are imperative for any lawyer:

- Developing one's skill set
- Appraising oneself to the technological changes affecting the legal profession. One must realise that technology is for assistance and the feeling of reluctance toward adopting new technology must go. There must be initiative in comprehending technological advances especially among the younger members of the Bar
- Changes in the field of law itself

Justice Shyam concluded by noting that he is impressed with this innovative endeavor and requested the participants to make good use of this opportunity. The process for empaneling more LACs has already started but however it is up to them to walk the extra mile.

Mr. Dutta continued the discussion with a brief on Studio Nilima's work and mandate. The preamble of this Constitution assures justice. Justice means different things to different people. We are not concerned with the philosophy of the concept of justice. As lawyers working in the arena of free legal services one must be well conversant with the constitutional intent in Article 22. The element of choice in Article 22 in practice hinges on a person's capacity to pay a lawyer. As a result, to ensure the Article 22 right of even indigent

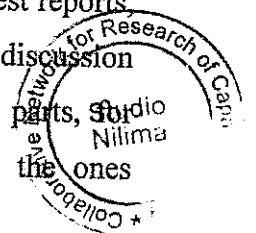


persons is protected, one must read Article 22 with Article 39A. Therefore, the amicus/LAC is deemed to be lawyer of choice for the indigent/poor person which would mean the responsibility of the LAC flows from Article 22 and 39A.

Following this, Justice (Retd.) C.R Sarma began the discussion by thanking Studio Nilima for inviting him and recalling his association with Smt. Nilima Dutta and Mr. Nilay Dutta from his Gauhati University days. On the necessity for free legal services, Justice (Retd.) Sarma stated that it is a fact that not only the poor or indigent but even middle-class people find it difficult to get competent legal representation at the High Court level. In this light, the Legal Services Authorities are vested with great responsibility.

However, once inside the courtroom, the responsibility of ensuring justice rests squarely on the prosecution and the defence counsel. For a prosecution lawyer, the responsibility is slightly lesser than the defence lawyer as he has the aid of the investigating officer. As a defence lawyer, it becomes very difficult to find out the inconsistencies, prosecution lapses, law points etc without the required command over the law. There is no doubt on the capability of the lawyers who are presently engaged in providing legal services but it is to be kept in mind that even the law is a constant learning process and the moment someone is of the view that they have complete knowledge of the law, the learning process stops immediately for such professionals. The responsibility upon the counsel further increases due to the immense case load upon individual judges which makes it difficult for them ensure justice delivery without the assistance of counsel. In conclusion, Justice (Retd.) Sarma mentioned that the work of both counsel and judge is further complicated with the increase in the volume of the jurisprudence of the Supreme Court.

Following the introductory remarks, Mr. Nilay Dutta initiated the discussion on the case simulation through the previously circulated paperbook. Mr. Dutta began by providing inputs into how one must generally approach the paperbook by analyzing the impugned judgement which gives useful insights into the mind of the judge. This was followed by introductory primers into certain key areas of the law which require specific attention in the criminal appeals which are generally dealt with by the Amicus/LACs. This includes statements under Section 313 CrPC, the law on which has recently undergone expansion in light of the decision in *Reena Hazarika*, the law relating to FIR, sketch map, inquest reports, post mortem reports, lacuna in investigation, seizure list, forensic report etc. The discussion also included discussions on reading parts of the evidence in relation to other parts, for example, on determining whether the injury in the inquest reports tally with the ones mentioned in the post mortem report in a particular case.



It was also emphasised that while the court appointed counsel in jail appeals are termed *amicus curiae* it is important to realise that they have to act as defence counsel. Certain rules of ethics must also be emphasised while dealing with criminal appeals.

An issue which has been highlighted in the previous interaction session too is that statements under Section 161 CrPC are not available in briefs provided to the *amicus*. Section 161 CrPC statements being vital tools for the defence counsel, it is upon the *amicus* to inspect the records and go through the statements to the police by availing of their right to inspect the records on application under the Gauhati High Court Rules.

The majority of the SLPs from the correctional homes which have been pursued by Studio Nilima in the Hon'ble Supreme Court have required applications for condonation of delay. This points to the fact that communication of dismissal of appeals to the persons concerned in the correctional homes must be strengthened. The *amicus*/LACs also have a right to consult their clients in the correctional homes and as a result we have been mooted the idea of making video conferencing facilities available for the lawyers to use.

This was followed by a detailed discussion on the circumstantial evidence, law on confession etc in the light of the issues identified in the paperbook by the participants. Justice (Retd.) Sarma reiterated the facts of the case so as to illustrate certain issues relating to evidentiary value and the confession involved in the case. He advised that it is a good idea to visualize the setting of a confession from the facts available to identify whether a confession had been recorded legally. An important aid is the order sheets of the Magistrate and a working idea of the atmosphere of the police station/lockups.

In relation to confession, focus was also laid upon dealing with dying declarations. The essentials and the principle behind dying declaration was discussed and the participants were also shared their experiences and queries in dealing with dying declarations. Another crucial issue when reading and dealing with evidence in criminal cases in identifying independent witnesses and interested witnesses. Issues involving identification of such witnesses, burden of proof in proving the nature of witnesses were also deliberated upon.

The next point on the agenda was identifying weighing of evidence through omissions, contradiction and improvement. Each of these concepts were deliberated upon and discussed with the aid of caselaw and examples of actual cases in the experience of both Justice (Retd.) Sarma and Mr. Dutta. Famous cases decided by Gauhati High Court in the previous decades and also courts in other jurisdictions like the Supreme Court of the United States were discussed to bring home the intricacies of this omission, contradiction and improvement upon the participants.



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In conclusion, Justice (Retd.) Sarma stated that being involved in *Amicus/LAC* panels give younger lawyers exposure to serious cases of great magnitude which they may not have had exposure to in ordinary course. It is therefore essential that the advocates utilize this opportunity to provide free legal services and also gain exposure which will be useful to them in the course of their career.

Mr. Dutta stated that we need to reflect on issues like communication with the correctional homes and whether this responsibility for communicating dismissals can be vested upon the *Amicus/LACs* themselves to ease and expedite the process. It is also important to contemplate upon measures which can address the issues which arise for families of inmates of correctional homes as in *Reena Hazarika*. On the part of the *Amicus/LACs*, a sense of excitement and a sense of social responsibility needs to be cultivated in line with the constitutional vision enshrined in the Preamble, Article 22(1) and Article 39A.

The meeting concluded with the participants expressing that it would be fruitful to continue these sessions in the future too. Thus, it was resolved that these sessions would be continued for focused engagement and training in the coming days based on a more specialised agenda.

