



Legal Services in Assam: Vision, Deficiencies and Rectification

A Report

Consultation Meet

organised by

Studio Nilima : Collaborative Network For Research and Capacity Building

in collaboration with

Assam State Legal Services Authority

Guwahati, March 30, 2019

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I. Context

A consultation meeting was organised by Studio Nilima: Collaborative Network for Research and Capacity Building (Studio Nilima) in collaboration with the Assam State Legal Services Authority (ASLSA) on March 30, 2019 at the Circuit House in Guwahati, Assam, India. The objective of the meeting was to create a collaborative space for sharing knowledge and experience between and amongst the various stakeholders such as the Inspector General of Prisons, Representatives of the Department of Social Welfare and Secretaries of the District Legal Services Authorities (DLSA). It was organized with a vision to reflect on the existing structural deficiencies and knowledge gaps within the ecosystem serving legal services in Assam and collectively articulate and formulate effective measure for its rectification and redressal.

At the outset, Studio Nilima would like to record its gratitude to the vision, commitment and support of the Hon'ble Chief Justice of the Gauhati High Court and its Justices in facilitating this consultation meeting. The consultation meeting was also supported from its inception by the ASLSA, who contributed their time, energy and resources in organising it with Studio Nilima. Because of the collective efforts of all involved, the meeting drew a wide participation from across Assam. Of the 33 DLSAs, 17 were represented at the gathering. The meeting created an engaged and active space for dialogue which also benefited from the insights shared by the Hon'ble Chief Justice of the Gauhati High Court Mr. Justice A.S Bopanna, Hon'ble Mr. Justice Arup Kumar Goswami, Hon'ble Mr. Justice Suman Shyam, Mr. Ranjan Sharma, Inspector General of Prisons and the esteemed Judicial Officers.

The meeting started off with an inaugural session which lasted for 50 minutes followed by two working sessions, focussing on specific areas for a duration of 110 minutes each. A concise summary of the discussions is provided in the following sections.

II. Inaugural Session

The welcome address was delivered by Mr. Justice (Retd.) Brojendra Prasad Katakey, Director of Pratidhwani (a unit of Studio Nilima working in the correctional homes) and the Executive trustee of Studio Nilima. In his opening remarks, Justice (Retd) Katakey foregrounded the mandate for legal services implicit in Article 39 A of the Constitution of India. He emphasised that the necessity of such provisions were felt to serve high volumes of economically marginalized and vulnerable sections of the litigants, indigent inmates of

correctional homes and the declared foreign nationals. However, he noted with concern that such constitutional mandate remains to be fully realised. Welcoming the gathering and acknowledging with gratitude the presence of the Hon'ble Chief Justice, Hon'ble Mr. Justice Goswami, Hon'ble Mr Justice Shyam, Hon'ble Justice (Retd.) Sharma, the Inspector general of Prisons and the various Judicial officers of Assam, he elaborated the vision and objective of Studio Nilima and reflected specifically on its role in facilitating effective legal services and awareness in the correctional homes of the region.

The Hon'ble Chief Justice of the Gauhati High Court, in his inaugural address, emphasised the vision of the consultation meeting as an opportunity for stakeholders as well as judicial officers to interact and exchange ideas amongst each other and members of Studio Nilima. He urged for a wider interpretation of the term “legal services” as defined in the Legal Services Authorities Act, 1987 in realizing the mandate and spirit of Article 39 A of the Constitution of India and noted the contribution of DLSA Dibrugarh towards their commitment in fulfilling the constitutional vision. Acknowledging the contribution of Studio Nilima in supporting the mandate of the State Legal Services Authority through the pro bono work, the Hon'ble Chief Justice reiterated that the consultation was meant to be participatory rather than acrimonious. He urged the members to use the consultation as a forum to share best practices and evolve mechanisms for the DLSAs within their statutory framework to ensure their continued implementation.

Recognising the role of the secretaries of the DLSAs as being the “bedrock of the entire legal services mechanism,” and the “good work” being done by the members, Hon'ble Justice Goswami, in his address, emphasised the importance of exchanging knowledge and gaining perspective from others. He emphasized that the consultation was to be viewed as an opportunity to improve rather than limiting discussions to challenges, constraints and limitations. Quoting Robert Frost and urging members to take the road less travelled, he foregrounded the vision of the consultation to collectively explore pathways “to make changes within the existing resources.” Identifying the palpable lack of awareness of rights by vast number of individuals within the social structure as the biggest impediment of the justice delivery mechanism, he noted with concern that a large number of schemes to ameliorate the conditions of the voiceless do not effectively percolate to the grassroots. Recognising the DLSAs as the “bridge,” and referencing the contribution of DLSA Dibrugarh, he urged members to be creative to develop a repertoire of ideas to fulfill their

constitutional commitment. He reiterated that Article 39A encompasses equal justice as part of legal aid. He encouraged members to imbibe the motto “to reach out and respond.” In doing so, however, he illustrated the importance of “follow up actions” having reached out to people, whether through camps and/or activities. Drawing from his experiences in Nagaland, he concluded by highlighting the role of civil society and contribution of Studio Nilima in providing and supporting effective legal services to persons in need, more specifically in the correctional homes of Assam and in the reformation of such persons in custody.

Hon’ble Justice Shyam, in his address, reflected on the evolution of Article 39 A of the Constitution of India. He marked the era post 1980 and noted it to have caused the “paradigm shift” in the nation incorporating a constitutional approach and mandate based on principles of justice. He illustrated the landmark decisions of the Hon’ble Supreme Court in Hussainara Khatoon, Khatri v State of Bihar in bringing legal services within the ambit of Article 21 of the Constitution of India. Quoting from the judgment of the Hon’ble Supreme Court in Suk Das v Union Territory of Arunachal Pradesh, he emphasised that free legal assistance is a fundamental right of a person and is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21 of the Constitution of India. Further, he reminded the members at the gathering that the consultation was to identify room for improvement and concluded his address by suggesting three key areas namely the role of the DLSA, the information mechanism and the need for capacity building of the LAC/ Amicus as a starting point for the ensuing discussion.

The Inaugural session ended with a vote of thanks by Mr. Nilay Dutta, President of Studio Nilima. The following sections will summarize the working group discussions that ensued after the Inaugural Session.

III. Working Session 1 & 2:

Themes: **Legal Services: Constitutional Vision and Statutory Mandates**
 Legal Services in Practice: Deficiencies

Presidium: **Mr. Justice (Retd.) B.P Katakey, Mr. Justice (Retd.) Biplab Kr. Sharma,**
 Mr. Nilay Dutta

The thematic focus of the first two sessions as set in the Agenda was clubbed together during the first working group. This was done primarily because it was felt that the focus of the first session which was outlining the constitutional vision and statutory mandate with regard to

access to legal services at various levels had been sufficiently addressed during the Inaugural session and therefore the focus was redirected towards discussing the deficiencies in practice.

Issues identified:

1. Coordination and cooperation with other district administration/government departments

One of the prime issues that were highlighted in the first session was that several DLSAs were of the opinion that they have not been receiving adequate support from the district administration in their daily activities. DLSA Dibrugarh stated that a plan to make Legal Aid Clinics in districts operational had not been yet carried out because of the lack of cooperation of the district administration officials who had cited the upcoming elections to keep this project in abeyance. DLSA Nagaon stated that the nodal officer from the district administration did not cooperate in meetings which had an impact on work especially relating to beneficiaries of government welfare schemes.

Another important issue that was identified during the course of this session was that DLSAs in several districts had been receiving requests for assistance in relation to access to government welfare schemes. In such instances, applications were being forwarded to the relevant government departments by the DLSA but in most cases they were not entertained by citing scheme related criteria. DLSA Darrang expressed the opinion that in many cases the lists of beneficiaries which were drawn up for implementation of such schemes were influenced politically and were thus unfair and arbitrary. However, the DLSA were not in a position to accord any relief to the persons concerned. The concerned Secretary expressed a concern that such cases would lead to erosion of faith of the general public upon the legal services mechanism.

In light of the above discussion, the following recommendations were formulated:

Recommendations

- It was pointed out by some of the Secretaries that Legal Aid Clinics can be set up without the direct involvement of the district administration. The relevant NALSA schemes provide that local bodies can be persuaded to publicize the functioning of the Clinics and this measure may be resorted to in districts where the district administration was not cooperating as yet.

- With respect to queries related to administration of government welfare schemes, the following steps could be taken:
 - a. DLSAs to obtain a working understanding of government welfare schemes and their criteria.
 - b. District administration/Government departments administering welfare schemes to be involved in legal awareness camps being carried out by the DLSAs so that they understand their role as stakeholders.
 - c. Consultation meets involving district administration/Government departments and other stakeholders in providing legal services at the district level.
 - d. In cases of patent irregularity or arbitrariness in administering of government schemes which are brought to the notice of the DLSA, the concerned Secretary may draw up the relevant facts of the case and forward opinion to the ASLSA. The ASLSA may then pursue the matter in the High Court in its writ jurisdiction through senior advocates if needed. *Reference may be had to Regulation 15 of the National Legal Services Authority (Free and Competent Legal Services) Regulation, 2010 (hereinafter referred to as 2010 NALSA Regulations) which provides for engagement of senior advocates in appropriate cases.*

2. Corruption

An issue which is connected intrinsically with effective legal representation and access to justice is corruption and professional misconduct by lawyers engaged with providing free legal services. It has emerged from our discussion that DLSAs are not very clear with the procedure to be followed when confronted with allegations of corruption by legal aid counsel.

An example cited was from Studio Nilima's Consolidated Report on Correctional Homes Assam, INDIA 2018 (at pp. 29-32 of Vol.II) which was a complaint alleging demands for money by a LAC from the correctional home at Dhubri. Similarly, recent media reports of corruption allegations at Silchar against an LAC were brought up. However, it was noted that cases of this nature were not being referred to the Bar Council for appropriate proceedings.

It emerged during the discussion that most DLSAs where the Monitoring and Mentoring Committee required under Regulation 10 of 2010 NALSA Regulations were functioning would refer such cases to the Committee. In most cases, no stringent action was taken and the concerned advocate would be let off with a warning. An instance of DLSA Nalbari was cited where a panel lawyer who was given a warning by the Monitoring Committee continued to remain in the panel and was allocated legal aid briefs in the future too.

DLSA Dhemaji expressed an opinion that on the ground it would become extremely difficult to get experienced lawyers from the District Bar to apply for empanelment if any such complaints were sent to the Bar Council as it would be considered an acrimonious step by the local Bar. Similarly, Member Secretary, ASLSA expressed his opinion that in cases where the complaint is filed with malafide intention, a reference of the complaint to the Bar Council would tarnish the reputation of the advocate in question.

In light of the above discussion, the following recommendations were formulated:

Recommendations:

- Since the Monitoring Committee under the 2010 NALSA Regulations does not have power to act against professional misconduct which is the exclusive domain of the concerned Bar Council, such complaints must also be referred to the Bar Council even while the Monitoring Committee conducts its proceedings.
- The Monitoring Committee must consider immediate removal of an advocate from the panel if found guilty of misconduct so as to ensure that he is not allocated such free legal services briefs in the future. It was noted that the State Bar Council has a full-fledged inquiry mechanism which provides due process to both the complainant and accused.
- DLSAs must be encouraged to take a strong stand against allegations of corruption or professional misconduct by legal aid counsel so as to create a deterrent effect.

3. Onerous Bail Conditions & Under Trial Review Committee

Onerous bail conditions and at times absence of communication with family members render several inmates unable to pay furnish surety amounts for their bail bonds. It emerged during the discussion that while in some districts Under Trial Review Committee (hereinafter referred to as “UTRC”) meetings as directed by the Hon’ble

Supreme Court in Re-Inhuman Conditions in 1382 Prisons, W.P(C) 406/2013 were being held regularly and appropriate cases were recommended for PR bonds it was not an effective solution according to several DLSAs. This was partly because courts were indisposed to granting bail on PR bonds in such cases due to the possibility of such persons not honoring the bail conditions.

Infact, the concerned Secretary from DLSA Kokrajhar suggested that some mechanism for police observation may be initiated which in such cases which would aid the Magistrates in granting bail in such cases. The Standard Operating Procedure (SOP) for UTRCs formulated by NALSA which has been adopted by the Supreme Court in Order dated 04.12.2018 in Re-Inhuman Conditions was brought to the notice of the participants.

It was noted that since the UTRC SOP mandates that cases where bail had not been availed due to inability to furnish surety amount they should be recommended for PR bonds to the concerned court by the UTRC irrespective of whether courts would be disposed to grant such relief. In omitting to do this, the UTRC would be placed in contempt of the Supreme Court.

Similarly, it needed to be clarified that the mandate upon the UTRC in the SOP was not only limited to examining eligibility for release under S. 436A of the Code of Criminal Procedure, 1973 but had been expanded to several other categories including examining possibility of compounding cases where offences were compoundable. The UTRC SOP vests responsibility on the Inspector General (Prisons) too who is mandated with collecting data on under trial prisoners (Step 1 of the SOP). The subsequent steps involve the Under Trial Review Committee itself.

It has come to light from replies received to applications made under the Right to Information Act, 2005 by Studio Nilima that the UTRCs in various districts had not been considering all the categories of inmates it needed to cover and some of the UTRCs had limited their function to only taking into account of eligible cases under S. 436A CrPC. Similarly, RTI replies revealed that many correctional homes were not conducting monthly UTRC meetings as mandated by the Supreme Court in Re-Inhuman Conditions. The I.G Prisons informed during the discussion that the recent directions of the Supreme Court had been conveyed to all the correctional homes in the last month and they will be

complied with across all correctional homes in the near future. At this point, DLSA Sibsagar informed that they had called for report on UTRC meetings from the district jail but had not received any reply in the last two months. The I.G Prisons informed that they will take up this matter with the concerned correctional home immediately.

DLSA Kamrup informed that they have in several instances cases of onerous bail conditions have been located in Central Jail, Guwahati, in many of which chargesheets had not been filed. This request had been made to the Commissioner of Police who is a member of the UTRC but no action had been taken.

Recommendations:

- The NALSA SOP for UTRCs which has been directed by the Supreme Court to be followed in correctional homes in Re-Inhuman Conditions must be followed in its entirety and not restricted to certain categories.
- Case concerning onerous bail conditions which are common in the correctional homes must be recommended for PR bonds to the concerned courts as mandated by the SOP and follow up action must be taken in subsequent meetings.
- The various authorities involved including Assam State Legal Services Authority and Inspector General of Prisons must ensure effective and timely communication of relevant orders of the Supreme Court to the respective DLSAs and correctional homes.

4. Jail Visits

A wide range of issues concerning legal services and correctional homes can be addressed by thorough and methodical jail visits by stakeholders. Respective DLSAs too have an important role to play in this regard. It has been noticed that presence of juveniles in correctional homes, mentally ill inmates, poor living conditions, onerous bail conditions etc. can be prevented in the presence of a well-designed jail visit mechanism.

While jail visits are being conducted in correctional homes by the concerned DLSAs and also the Chief Judicial Magistrates, in several districts, Chief Judicial Magistrates are vested with dual charge as Secretary, DLSA which often leads to the quality of jail visits suffering due to the workload upon the judicial officer. Older practices where inmates

were lined up during jail visits by authorities also had an important advantage in ensuring that no inmate who wanted to make a representation would be denied that opportunity. There have been instances encountered by Studio Nilima where juveniles were being detained in correctional homes which point to a systemic failure an important component of which is jail visits. During the discussion, it emerged that there were several geriatric inmates in Central Jail, Jorhat including one Sibu Kurmi, who is visually impaired, who could have been released with judicial intervention and proper follow up action by visiting authorities.

In light of the above discussion, the following recommendations were formulated:

Recommendations:

- The mechanism of jail visits by DLSAs and Chief Judicial Magistrates needs to be made more effective by implementing a standardised process which would also necessitate that the judicial officer takes interest and initiative during the visit thus ensuring accountability.
- Grievance redressal mechanisms should be an integral part of the jail visits by authorities and care should be taken that all categories of inmates have access to grievance redressal.

5. Capacity Building of Officers of Correctional Homes

Keeping in mind the increasing mandate of the correctional administration in facilitating legal services for the inmates and ensuring human rights compliance, it is essential that the correctional officers themselves have contemporaneous understanding of the legal mandates upon them. This can only be provided by the presence of a targeted and regular capacity building program for the members of the correctional administration.

The Deputy Inspector General of Prisons who was present mentioned that a request had been made to the Assam State Legal Services Authority for a legal awareness program for correctional officers especially in relation to the mechanism for appeals in the Supreme Court. This program has been initiated in some districts.

It also emerged that in certain areas, correctional staff had not been able to comprehend certain directions of the Supreme Court. DLSA Dhemaji brought to attention the fact that

District Jail, Dhemaji had informed that no remission had been granted in its response to Template B which is a constituent document of the UTRC SOP. The fact that no remission was granted by a correctional home was unacceptable in light of the remission provisions in the Assam Jail Manual. It was suggested by the I.G Prisons that this was a case of misappreciation of the template.

It was suggested that with the adoption of the Model Prisons Manual into the Assam Jail Manual which has not been updated comprehensively for a long time it would be beneficial for all stakeholders if the ASLSA could be consulted in the process so that the leaps and bounds in which the law has developed in certain areas related to correctional homes like mentally ill inmates could be incorporated into the new manual.

Recommendations:

- A targeted and regular capacity building module should be initiated with respect to legal services especially in the form of knowledge and experience sharing platform between the correctional administration and legal service authorities at the state and district level.
- The opinion of the Assam State Legal Services Authority may be taken in updating the Assam Jail Manual in line with the Model Prison Manual, 2016 which is a process already initiated by the Government of Assam in light with the directions of the Supreme Court in Re-Inhuman Conditions.

6. Capacity Building of LACs & Amicus: Ineffective Legal Representation & Training

One of the recurring issues that came up throughout the discussion and was highlighted by both the speakers and the DLSAs was the necessity of effective legal representation as opposed to mere legal representation. In light of the observations made by the Supreme Court in Reena Hazarika v. State of Assam as reported in 2018 SCC OnLine 2281 on the quality of legal services available to the appellant at the trial court and the High Court, it is imperative that some reflection be done on this point.

During the discussion, it was noted that induction of new panels becomes problematic in the districts as in certain cases there is opposition from the existing panel lawyers to the induction of new lawyers and in certain cases there is a dearth of experienced lawyers from the district Bar who would be interested in being Legal Aid Counsel.

An worrisome issue is the growing perception that legal representation rendered by legal aid counsel is not effective. DLSA Sonitpur reported that there have been several requests for change of LACs who have been appointed by their allocated clients. DLSA Nagaon reported that they have encountered instances where people have specifically requested that a non-panel lawyer be allocated their case. Citing a specific instance, DLSA Sonitpur referred to a training program conducted in Biswanath Chariali where the legal aid counsel did not have knowledge of basic facets of practice.

It also emerged during the discussion that the Monitoring and Mentoring Committee under Regulation 10 of the 2010 NALSA Regulations which has an impact on effective legal representation was not functioning in certain districts in spite of having been constituted. The 2010 NALSA Regulations at Regulation 15 also provides for the engagement of senior counsel in appropriate cases. However, this provision which can also serve as a tool for ensuring effective legal representation in crucial cases along with providing a platform for training of younger lawyers has seldom been used.

It was noted that a series of training sessions for legal aid counsel has already been initiated by Studio Nilima in collaboration with the Assam State Legal Services Authority in light of the observations of the Supreme Court in Reena Hazarika. This kind of initiatives could be eventually expanded to the districts.

Recommendations:

- Intensive and targeted training programs at regular intervals should be introduced for legal aid counsel at district level along with making specific budgetary provisions in this regard.
- Accountability mechanisms for legal aid counsel need to be introduced by ensuring proper functioning of Monitoring and Mentoring Committee along with a more proactive approach by the DLSAs.
- Accountability and access to resources for legal aid counsel with respect to professional duties like communication of orders/judgements to clients, consultations using video conferencing facilities etc must be ensured by the ASLSA and respective DLSAs.

IV. Working Session 3:

Themes: Addressing Deficiencies in Practice

Presidium: Mr. Justice (Retd.) B.P Katakey, Mr. Nilay Dutta, Mr. Apurba Sharma

1. Lok Adalats and Concerns:

There first issue that was brought up for discussion pertaining Lok Adalat was regarding issue of process in the pre-litigation phase which has been faced by all DLSAs. This issue has been compounded by the lack of specific statutory provisions on this point. It emerged during the discussion that several DLSAs have been adopting different mechanism for bulk issue of process.

DLSA Sonitpur stated that using the services of the field officers of the concerned banks was an effective and timely mechanism of dealing with problems of this nature. Even in Darrang, banks and electricity distribution companies have been taking responsibility to issue summons. However, in certain districts as in Dhemaji, banks have generally reported lack of staff to deliver summons. As a result, this solution cannot be applied to all districts. It was also reiterated by several DLSAs that the court process servers are already overburdened with general issue of process as are the police.

Keeping in mind the problems relating to issue of process, the Member Secretary, ASLSA informed that the frequency of Lok Adalats have been decreased. It was also noted that the role of conciliators have been compromised as banks generally have pre-set guidelines with respect to the terms of settlement which defeats the purpose of conciliation.

Posts of members of Permanent Lok Adalats have been lying vacant over the years. DLSA Darrang suggested that Permanent Lok Adalats are an important tool in addressing the legal issues and claims arising out of implementation of government schemes.

Recommendations:

- The statutory silence regarding issue of process in pre-litigation phase must be taken up with NALSA through the ASLSA.
- Vacant posts in the Permanent Lok Adalats need to be filled so as to enable an important tool in the legal services framework.

2. Reformation and Reintegration of Inmates

a. Role of Culture

Both the DLSAs and the correctional administration leadership who were present at the meeting were of the unanimous view that culture has a crucial role in reformation of inmates. DLSA Sonitpur and DLSA Darrang provided accounts of initiatives undertaken by them to induce reformation through the means of culture which included yoga, meditation, involvement of civil society groups like Brahma Kumaris, Art of Living Foundation etc. Even inmates can have a huge impact through cultural participation on other inmates. The DIG Prisons cited the example of Rajkumar Meghen who had taken initiative in organising cultural programs within the home. Prominent members of civil society like Justice (Retd.) Mukundakam Sarma and Mr. P.K. Goswami, Senior Advocate, Gauhati High Court had also contributed in improving the environs of the correctional home.

b. Skill Building and Linkages with Industries

Apart from reformation, it is also essential to introduce the concept of rehabilitation and thereby successful reintegration to society. In Studio Nilima's experience, that when a person is released from jail without any possible sources of rehabilitation, he begins falling back on the anti-social connections he has made during his incarceration.

According to the DIG Prisons apart from the traditional jail industries like bamboo, new industries and vocational paths like electricity work, bulb making etc have been introduced. Women have access to embroidery and like activities. The department has also stressed on the involvement of Non Governmental Organisations (NGOs) in art and culture propagation within the correctional home. In spite of these activities, the department is not in a position to inform how many inmates have been reformed till today.

DLSAs also have an important role in promoting the skill development activities within the correctional home. For example, DLSA Kamrup had organised instructors from the Observation Home to impart vocational training at Central Jail, Guwahati. DLSA Darrang had organised funds from UCO bank to start mushroom farming in

correctional homes while DLSA Goalpara has also scaled up strawberry farming being done in the correctional home at Goalpara. DLSA Sonitpur on the other hand has engaged a former life convict as a Para Legal Volunteer (PLV) in its front office.

3. Victim Compensation

Victim compensation at least in the context of Assam has received an impetus with the recent amendment of the Schedule to the Assam Victim Compensation Scheme, 2012. However, victim compensation cannot be kept only limited to monetary compensation. A holistic view with regard to victim compensation is thus the need of the hour.

Suo moto compensation to victims have been taken up by certain DLSAs including DLSA Sonitpur. In Sonitpur, for example, suo moto compensation is provided in cases through the DLSA front office and also from reports of offences which is called from the police. In case of final recommendation with regard to compensation amount, adjustment is done in the final amount. DLSA Sonitpur also cited an instance where the money for disbursement of compensation was not immediately available and one of the panel lawyers came forward to contribute to the payment. Notwithstanding such developments, lack of awareness about victim compensation continues to be a major issue.

During the discussion certain DLSAs raised a question as to claims for compensation in cases where the accused have been acquitted. It was clarified that definition of victim under the scheme clearly specified that a person merely needed to be ‘charged’ for the victim to be eligible for compensation. Hence, acquittal would have no effect whatsoever.

The fact that victim compensation often stretches beyond monetary compensation as was envisaged by the scheme was illustrated by an experience shared by DLSA Karimganj. In this case, a victim of an offence under the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO”) had been refused admission into school as a fallout of social ostracisation connected with the offence. The DLSA took initiative to counsel the concerned school principal who after a prolonged session of counselling agreed to give admission to the child. The DLSA has also taken up the initiative of providing vocational training to the child.

The Member Secretary, ASLSA informed that budget with regard to victim compensation was not a constraint as it had received generous grants under the Nirbhaya fund and others. However, surprisingly certain DLSAs had refused such funds citing lack of necessity which pointed to a lack of proactivity in dealing with victim compensation.

Recommendations:

- DLSAs may contribute to cultural practices and skill development within correctional homes in a structured manner.
- DLSAs need to be proactive and innovative in dealing with victim compensation and focus on long term rehabilitation of victims and their families instead of merely disbursing monetary compensation stipulated under the scheme.
- Awareness regarding victim compensation has to be taken up by the DLSAs
- DLSAs must raise instances where compensation has not been awarded as per scheme to the notice of the ASLSA or the High Court.

4. Living Conditions in Correctional Homes:

Several issues within correctional homes which point to a lack of well designed jail inspections exist in Assam. In the context of Studio Nilima's work in correctional homes, it was noticed that supply of sanitary napkins to female inmates was not available in some of the correctional homes. DLSA Nagaon informed that a similar issue was reported in that district and was included in their report. The Deputy Inspector General of Prisons informed that many of these incidents are merely due to the lack of awareness of jail officers.

On the issue of medical facilities, in the experience of Studio Nilima, gynaecologists have not been allocated to correctional homes and even female medical officers are not present in most correctional homes. Ambulance facilities too are not available to deal with emergency situations for inmates. DLSA Goalpara mentioned that the condition of the hospital kitchen was unhygienic as it was located in the hospital ward itself. DLSA Sonitpur on the other hand mentioned that ambulance facilities are not available in the correctional homes at Abhayapuri and Biswanath Chariali. In addition, hospital wards are not functioning in these correctional homes.

The DIG Prisons informed that while some steps have been taken by approaching the government in all of the discussed issues but the solutions had not yet been implemented. He referred to a meeting held with the Joint Director of Health Services where it was decided that weekly visits by teams of doctors consisting of gynecologists and pediatricians would be arranged in correctional homes. A team consisting of one psychiatrist and four counsellors would also be deputed for visiting correctional homes under an initiative of the National Health Mission which would be extended to 21 jails initially. On the issue concerning ambulance services, a proposal has been placed before the Additional Chief Secretary (Home) and Mr. Biswajit Daimary, Member of Parliament was also requested for allocation from the MPLAD fund. The correctional administration is vested with the task of balancing welfare and security and it has to work within that limitation. He expressed his opinion that compared to correctional homes in the northern part of India, correctional homes in Assam are ahead in terms of human rights compliance.

In a similar vein, DLSA Sonitpur informed that there was an issue regarding delivery of rotten vegetables at Central Jail, Tezpur which according to the jail authorities was due central purchasing of vegetables. The DIG Prisons informed that central purchasing for vegetables has been done away with and the focus is now on district level purchasing.

Recommendations:

- DLSAs must be observant with relation to living conditions of inmates in correctional homes so as to ensure that no rights of inmates are violated in terms of availability of basic facilities.
- DLSAs must play the role of an accountability mechanism for the correctional administration in ensuring that the living conditions of inmates are rights based and conducive to reformation.

V. Summary Session:

Presidium: Mr. Justice (Retd.) B.P Katakey, Mr. Nilay Dutta, Mr. Apurba Sharma, Mr. S.N Sarma

The concluding remarks were made by Mr. Nilay Dutta and Mr. S.N Sarma. Mr. Sarma acknowledged that the meeting provided the gathering with valuable insights. He stated that the first step towards addressing deficiencies was to acknowledge such deficiencies and look for support from available resources. He committed to specifically addressing the concerns of onerous bail conditions and urged the necessity of exploring district wise consultation. Keeping in mind that Section 11 of the Legal Services Authorities Act, 1987 which provides that district authorities must work in collaboration with other organisations (whether governmental or non-governmental) where appropriate, collaborations with the various departments of the Government of Assam and civil society organisations like Studio Nilima in realising the constitutional mandate were encouraged. He concluded by reminding the gathering that in serving the constitutional mandate, the approach of judicial officers needs to be “suitably moulded” so as to fully appreciate their dynamic role in the DLSAs.

Mr. Nilay Dutta, in conclusion, acknowledged the vision and contribution of its Board of Trustees namely Justice (Retd.) Dhires Narayan Choudhury, Justice (Retd.) Brojendra Prasad Katakey, Mr. Apurba Sharma, Ms. Millie Hazarika, Ms. Mahfuza Rahman. Foregrounding the work done by Studio Nilima, he emphasised that the organisation was primarily envisaged as a forum for collaborative research in the areas of law, governance, conflict and public policy with a focus on Northeast India. Its research is presented through its journal NILIMA: A Journal of Law and Policy which has a global reach. He further shared that Studio Nilima’s work has also spanned into an engagement with the correctional homes of Assam in providing effective legal services (in collaboration with the ASLSA) as well as outreach camps in target areas through its constituent legal services and awareness centre, Pratidhwani. Mr. Dutta noted with gratitude the participation of Justice (Retd.) Biplab Kumar Sharma and Dr. R.C Borpatragohain, Advocate General, Assam in its endeavours in facilitating legal awareness camps in Assam. Such endeavours have in turn been pivotal in identifying and addressing key concerns of narcotics and witch hunting.

Concluding remarks were made by members of the gathering who reiterated the need to explore and find interdepartmental linkages/ coordination in effective service of the

marginalised and vulnerable. A concern was raised on the rampant menace of witch hunting in areas of Goalpara, particularly Rongjuli which causes serious impediment to the work of the DLSA. In response, Mr. Nilay Dutta urged the necessity of working in collaboration with civil society while dealing with concerns of witch hunting in particular. He requested the DLSA Goalpara to seek the support of individuals such as Tankeswar Rabha while making interventions around issues of witch hunting. He also pointed out the unique position of DLSA Goalpara in addressing the concerns of the declared foreign nationals. He emphasised the necessity of studying and understanding the dynamics of the Desi/Bhatia issue with respect to the DFNs, specifically in Goalpara and Dhubri.

The session concluded with the agreement that the recommendations which were deliberated and discussed would be consolidated and presented before the Hon'ble Chief Justice of the Gauhati High Court by the ASLSA for affirmative action.

VI. Recommendations

The consultation meeting was instrumental in deliberating on key recommendations to address the structural deficiencies presently experienced within the legal services system. A significant recommendation made by Hon'ble Justice Goswami assured that district level consultation meets have to be conducted to address issues relating to legal services which would include respective Hon'ble portfolio Judges of the Hon'ble Gauhati High Court, DLSAs and representatives of district administration/relevant departments of the Government of Assam. Additionally, each thematic focus underscored key recommendations which are presented below.

Thematic Area: Legal Services: Constitutional Vision and Statutory Mandates

Legal Services in Practice: Deficiencies

I. Coordination and cooperation with other district administration/government departments

- It was pointed out by some of the Secretaries that Legal Aid Clinics can be set up without the direct involvement of the district administration. The relevant NALSA schemes provide that local bodies can be persuaded to publicise the functioning of the Clinics and this measure may be resorted to in districts where the district administration was not cooperating as yet.

- With respect to queries related to administration of government welfare schemes, the following steps could be taken:
 - a. DLSAs to obtain a working understanding of government welfare schemes and their criteria.
 - b. District administration/Government departments administering welfare schemes to be involved in legal awareness camps being carried out by the DLSAs so that they understand their role as stakeholders.
 - c. Consultation meets involving district administration/Government departments and other stakeholders in providing legal services at the district level.
 - d. In cases of patent irregularity or arbitrariness in administering of government schemes which are brought to the notice of the DLSA, the concerned Secretary may draw up the relevant facts of the case and forward opinion to the ASLSA. The ASLSA may then pursue the matter in the High Court in its writ jurisdiction through senior advocates if needed. Reference may be had to Regulation 15 of the National Legal Services Authority (Free and Competent Legal Services) Regulation, 2010 (hereinafter referred to as 2010 NALSA Regulations) which provides for engagement of senior advocates in appropriate cases.

II. Corruption

- Since the Monitoring Committee under the 2010 NALSA Regulations does not have power to act against professional misconduct which is the exclusive domain of the concerned Bar Council, such complaints must also be referred to the Bar Council even while the Monitoring Committee conducts its proceedings.
- The Monitoring Committee must consider immediate removal of an advocate from the panel if found guilty of misconduct so as to ensure that he is not allocated such free legal services briefs in the future. It was noted that the State Bar Council has a full fledged inquiry mechanism which provides due process to both the complainant and accused.
- DLSAs must be encouraged to take a strong stand against allegations of corruption or professional misconduct by legal aid counsel so as to create a deterrent effect.

III. Onerous Bail Conditions & Under Trial Review Committee

- The NALSA SOP for UTRCs which has been directed by the Supreme Court to be followed in correctional homes in Re-Inhuman Conditions must be followed in its entirety and not restricted to certain categories.
- Case concerning onerous bail conditions which are common in the correctional homes must be recommended for PR bonds to the concerned courts as mandated by the SOP and follow up action must be taken in subsequent meetings.
- The various authorities involved including Assam State Legal Services Authority and Inspector General of Prisons must ensure effective and timely communication of relevant orders of the Supreme Court to the respective DLSAs and correctional homes.

IV. Jail Visits

- The mechanism of jail visits by DLSAs and Chief Judicial Magistrates needs to be made more effective by implementing a standardised process which would also necessitate that the judicial officer takes interest and initiative during the visit thus ensuring accountability.
- Grievance redressal mechanisms should be an integral part of the jail visits by authorities and care should be taken that all categories of inmates have access to grievance redressal.

V. Capacity Building of Officers of Correctional Homes

- A targeted and regular capacity building module should be initiated with respect to legal services especially in the form of knowledge and experience sharing platform between the correctional administration and legal service authorities at the state and district level.
- The opinion of the Assam State Legal Services Authority may be taken in updating the Assam Jail Manual in line with the Model Prison Manual, 2016 which is a process already initiated by the Government of Assam in light with the directions of the Supreme Court in Re-Inhuman Conditions.

VI. Capacity Building of LACs & Amicus: Ineffective Legal Representation & Training

- Intensive and targeted training programs at regular intervals should be introduced for legal aid counsel at district level along with making specific budgetary provisions in this regard.
- Accountability mechanisms for legal aid counsel need to be introduced by ensuring proper functioning of Monitoring and Mentoring Committee along with a more proactive approach by the DLSAs.
- Accountability and access to resources for legal aid counsel with respect to professional duties like communication of orders/judgements to clients, consultations using video conferencing facilities etc must be ensured by the ASLSA and respective DLSAs.

THEMATIC AREA: ADDRESSING DEFICIENCIES IN PRACTICE

I. Lok Adalats and Concerns:

- The statutory silence regarding issue of process in pre-litigation phase must be taken up with NALSA through the ASLSA.
- Vacant posts in the Permanent Lok Adalats need to be filled so as to enable an important tool in the legal services framework.

II. Reformation and Reintegration of Inmates ad Victim Compensation

- DLSAs may contribute to cultural practices and skill development within correctional homes in a structured manner.
- DLSAs need to be proactive and innovative in dealing with victim compensation and focus on long term rehabilitation of victims and their families instead of merely disbursing monetary compensation stipulated under the scheme.
- Awareness regarding victim compensation has to be taken up by the DLSAs
- DLSAs must raise instances where compensation has not been awarded as per scheme to the notice of the ASLSA or the High Court.

III. Living Conditions in Correctional Homes:

- DLSAs must be observant with relation to living conditions of inmates in correctional homes so as to ensure that no rights of inmates are violated in terms of availability of basic facilities.
- DLSAs must play the role of an accountability mechanism for the correctional administration in ensuring that the living conditions of inmates are rights based and conducive to reformation.