



# **Capacity Building Workshop for Officers of Correctional Homes in Assam**

*Organised by*

Studio Nilima: Collaborative Network for Research and Capacity Building  
*in collaboration with*

Assam Prison Headquarters, Government of Assam  
and Assam State Legal Services Authority

## **REPORT**

November 23-24, 2019

At Assam Administrative Staff College, Khanapara, Guwahati



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## Introduction

*Studio Nilima: Collaborative Network for Research and Capacity Building* (hereinafter referred to as “Studio Nilima”) is a registered society based in Guwahati, Assam working in the areas of law, society, governance and culture. It aims to strengthen public policy through dialogues, community engagement, capacity building and action-oriented research addressing contemporary concerns of Northeast India, particularly Assam. A two-volume report titled, ‘Parked in Lot: A Consolidated Report on the Correctional Homes, Assam, 2018 India’, examined the inmate population, capacity, and living and working conditions for both the inmates and the staff, in all 31 correctional homes in the State.

Based on the findings of its report, a regional consultation was called upon by Studio Nilima in collaboration with the Assam State Legal Services Authority (hereinafter referred to as “ASLSA”) on March 30, 2019. The consultation which saw the active participation of the Office of the Inspector General of Prisons, Secretaries of the District Legal Services Authorities etc. which was organized with a vision to reflect on the existing structural deficiencies and knowledge gaps within the prison ecosystem and collectively draft and formulate effective remedial measures. In this meeting, it was felt that it had become imperative to organize a legal awareness program for the correctional home officers. It was suggested that a targeted and regular capacity building module be initiated with respect to legal services particularly in the form of knowledge and experience sharing forums between the correctional administration and legal services authorities at the state and district level.

In pursuance of this suggestion, Studio Nilima has organised the present capacity building workshop for the correctional administration officers and staff in Assam in collaboration with the Assam Prison Headquarters, Government of Assam and Assam State Legal Services Authority. Studio Nilima has organised similar capacity building workshops and law lectures since March, 2019 for the larger group of legal practitioners and law students. In continuation of such endeavour and with an aim to strengthen the skills and facilitate the capacity enhancement of the Officers across the various Correctional Homes in Assam, Studio Nilima has initiated this two-day workshop in joint collaboration of Assam Prison Headquarters, Government of Assam





# Studio Nilima: Collaborative Network for Research and Capacity Building

and the Assam State Legal Services Authority. We acknowledge the encouragement and guidance of Shri Sarbananda Sonowal, the Hon'ble Chief Minister of Assam, without whose blessings it would have not been possible for Studio Nilima to attempt this collaborative endeavour.

Panellists	Participants	Organisers
<ol style="list-style-type: none"> <li>1. Mr. Sarbananda Sonowal, Honourable Chief Minister of Assam;</li> <li>2. Justice (Retd.) Madan Bhimarao Lokur, Former Judge, Supreme Court of India, and presently Judge, Supreme Court of Fiji;</li> <li>3. Justice N. Kotishwar Singh, Judge, Gauhati High Court, and Executive Chairman, Assam State Legal Services Authority;</li> <li>4. Justice Suman Shyam, Judge, Gauhati High Court;</li> <li>5. Dr. R.C Borpatragohain, Advocate-General of Assam;</li> <li>6. Justice (Retd.) Brojendra Prasad Katakey, Former Judge, Gauhati High Court and presently Chairperson, Assam State Police Accountability Commission;</li> <li>7. Shri Hiren Nath, Inspector General of Police (SB);</li> <li>8. Smti. Barnali Sharma, Inspector General of Prisons, Assam;</li> <li>9. Shri T. T. Tara, former Additional Advocate General, Arunachal Pradesh and Advocate, Gauhati High Court;</li> </ol>	<ol style="list-style-type: none"> <li>1. Officers from the jails of Dibrugarh, Guwahati, Jorhat, Nagaon, Silchar, Tezpur, Abhayapuri, Barpeta, Biswanath Chariali, Dhemaji, Dhubri, Diphu, Goalpara, Golaghat, Hailakandi, Hamren, Karimganj, Kokrajhar, Majuli, Mongoldoi, Morigaon, Nalbari, N. Lakhimpur, Udalguri, Sivasagar, Sonari and Tinsukia;</li> <li>2. Representatives from Assam State Legal Services Authority;</li> <li>3. Representatives from the District Legal Services Authority from Kokrajhar, Bongaigaon, Barpeta, Karimganj, Hailakandi, Tinsukia, Golaghat, Darrang, Kamrup (M), Morigaon, Nalbari, Dhemaji, Dhubri, Udalguri, Sivasagar, Lakhimpur and Sonitpur.</li> </ol>	<ol style="list-style-type: none"> <li>1. Studio Nilima: Collaborative Network for Research and Capacity Building;</li> <li>2. Assam Prison Headquarters, Government of Assam;</li> <li>3. Assam State Legal Services Authority.</li> </ol>



Studio Nilima: Collaborative Network for Research and Capacity Building

10. Shri Apurba K. Sharma, Executive Chairman, Bar Council of India;		
11. Shri S.N. Sharma, Member-Secretary, Assam State Legal Services Authority;		
12. Shri Nilay Dutta, Advocate General of Arunachal Pradesh, and President of Studio Nilima.		





**Day 1: November 23, 2019**

The anchor for the event, Mrs. Rakhee S. Chowdhury, Advocate, Gauhati High Court commenced the session, took note of the fact that the rights of prisoners have been subject to judicial reforms over time, from the decisions of the Supreme Court in *Sheela Barse v. Union of India*, as reported in 1986 SCALE (2) 230 case to *Re: Inhuman Conditions in 1382 Prisons*, W.P(C) No. 406/2013. She noted that though Article 21 mandates the right to dignity, little has changed as far as the reform of the prison system is concerned, with the injustice that is being meted out rarely meeting the public eye. It thus becomes the duty of the legal system to act, and it is with this aim that the audience was welcomed into the session.

The felicitation ceremony commenced with the felicitation of the dignitaries present including Shri Sarbananda Sonowal, Honourable Chief Minister of Assam, Justice (Retd.) Madan Bhimarao Lokur, Former Judge, Supreme Court of India, and presently Judge, Supreme Court of Fiji, Justice N. Kotishwar Singh, Judge, Gauhati High Court, and Executive Chairman, Assam State Legal Services Authority, and Dr. R.C Borpatragohain, Advocate-General of Assam. Also present were Justice (Retd.) Brojendra Prasad Katakey, Former Judge, Gauhati High Court and presently Chairperson, Assam State Police Accountability Commission, Smti. Barnali Sharma, Inspector-General of Prisons, Assam, Shri T. T. Tara, former Additional Advocate General, Arunachal Pradesh and Advocate, Gauhati High Court, Shri Apurba K. Sharma, Executive Chairman, Bar Council of India, and Shri Nilay Dutta, Advocate General of Arunachal Pradesh, and President of Studio Nilima: Collaborative Network for Research and Capacity Building.

**1.1 Welcome address by Mr. Nilay Dutta, President, Studio Nilima: Collaborative Network for Research and Capacity Building**

The felicitation ceremony was followed by the welcome address by Mr. Nilay Dutta, President, Studio Nilima: Collaborative Network for Research and Capacity Building and Advocate General, Arunachal Pradesh. Mr. Dutta welcomed the guests on the dais expressing his gratitude to them for attending the event. He noted that it was a significant day for officials of correctional



homes in Assam as it was under the guidance of Justice (Retd.) Lokur that the Supreme Court had passed a series of visionary orders for prisoners' rights in the *Re: Inhuman Conditions in 1382 Prisons* matter. The guiding principle behind these decisions being that unless prison conditions are made better today, it is impossible to improve society tomorrow. Requesting deliberation on the matter as freely as possible, Mr. Dutta thanked the Hon'ble Chief Minister for the idea of organising the capacity building workshop. He further welcomed Justice (Retd.) Lokur's inputs as a guide to what should be done in the future, noting his significant role in the development of prison reforms in the country.

Mr. Dutta welcomed Justice N. Kotishwar Singh, noting that his proactive approach has changed the contours of the Assam State Legal Services Authority. With his active interest in the development of legal services in the state coupled with his emphasis on reaching the remotest villages in Assam, Justice Singh has been spearheading the mandate of the ASLSA. To this end, Mr. Dutta observed that Justice Singh had been attending rural awareness programs in Sonapur even today. His continued support was thus sought on the matter, as was the support of the ASLSA officers, who were then thanked for their attendance at the session.

Dr. Borpatragohain was then greeted as a dear friend and an eminent jurist, who could understand the realities of law as put in practice. Mr. Dutta stated that he had always noticed his presence in various jail visits, mentioning instances on the last visit to Goalpara where, in the midst of difficulties that arose, Dr. Borpatragohain was able to handle the situation along with the jail supervisor present.

Finally, Mr. Dutta introduced Mr. Apurba Kumar Sharma as a friend of Assam, stating that he could resolve any problem that may arise in the legal sphere in the state. With this, Mr. Dutta welcomed the audience to the frontier, stating the importance of direct involvement in the work. Correctional homes are the terminology now, due to the focus on reformation and rehabilitation. Here, it becomes important to look into the aftermath of the sentence. He raised the question of what happens once a person is released from prison. Is there adequate rehabilitation being done





to bring him back and re-integrate him with society? After the disconnect of as much as 10 years, and perhaps even more, do we let the former convict go and fend for himself in society? On this note, he invited the audience to put in recommendations as to what to do, to ensure that we do not leave them to go back to face the same problems that had driven them to commit a wrong in the first instance. The welcome note was followed by the inaugural speech, to be given by the Honourable Chief Minister of Assam, Shri Sarbananda Sonowal.

### **1.2 Inaugural address by Mr. Sarbananda Sonowal, Honourable Chief Minister of Assam**

The Hon'ble Chief Minister of Assam, Mr. Sarbananda Sonowal was invited to address the gathering. He started his speech by acknowledging the presence of Justice (Retd.) Madan B. Lokur. After greeting each dignitary, Mr. Sonowal stated that it was a very meaningful day for the officials of the Assam Jails. He emphasized the need to guarantee fundamental rights to the prisoners and make them feel comfortable. He also added an integral component into the deliberation i.e., prisoners' value for life. Mr. Sonowal asserted that the practice of values helps one attain peace and salvation. It gives one dignity, prestige and pride. He further emphasized and gave light to the fact that criminals are too human beings and insisted on the august gathering of Jail officials to explore the goodness in them. The "inner person" he stated, shall be sought to be found and explored. The guiding motivation for a jailor, he believes, is to explore that side of the inmates.

He referred to a question raised by Mr. Dutta and reiterated that we have done very little to assist an individual after he is released. He advocated for provision for facilities for them to make a life after serving their sentence. He praised the efforts of Central Jail, Dibrugarh in providing yoga classes and skill development programmes. He spoke highly of the need to spread the knowledge of yoga and the spiritual and mental peace that can be achieved by an inmate. He stated that yoga can bring positivity in the environment around and within an individual, noting that jails are the centres of reformation, it is imperative that the people within them should also be considered a component of human resource. To this end, he mentioned various schemes put forward by the government, which have also seen significant involvement of the corporate sectors. Yoga, he



noted, allows one to develop a sense of self, and improves one's quality of life, something that has found expression in the recognition of 21st June as World Yoga Day.

Mr. Sonowal also emphasized on the need for research and capacity building within the civil society. He advised the jail staff across all jails of Assam to seek the findings and data compilations of Studio Nilima and implement their guidelines. He welcomed the proposals of Justice Lokur. He concluded with some words on the need for legal awareness, asking that the jail staff take note of the deliberations. He further laid emphasis on technological development and how it is nullifying the gap between villages and cities. Thus, now with more access to information, people have begun to ask more and more questions. But to provide them with effective answers, it is essential for the jailors to undergo capacity building and be aware of contemporary developments in the field. Here, he lauded the efforts made by Mr. Nilay Dutta and by the Studio Nilima team, for the research and training efforts undertaken, stating that awareness and information dissemination, along with technological innovation is the need of the hour in the issue of prison reforms. Competition in the present age mandates easy access to technology, and it is imperative for such an environment to be created.

Mrs. Chowdhury then took to the dais to thank Mr. Sonowal for his words, noting his emphasis on the need to adopt a more humane approach and invited Justice (Retd.) Madan B. Lokur to address the audience.

### **1.3 Speech by Justice (Retd.) Madan Bhimarao Lokur, Former Judge, Supreme Court of India, and presently Judge, Supreme Court of Fiji**

Thanking the audience and the team at Studio Nilima, Justice Lokur referred to prior discussions with Mr. Dutta on the topic of prison reforms, noting that it was imperative that civil society gets involved with research and work on the empirical evidence that is already available. He stated that the Chief Minister's speech was an indication of the direction to be taken.





With this, he provided the background to the development of prison rights jurisprudence, which has seen a shift over time from punitive and deterrence-centred approaches to more rehabilitative and restorative ones. To this end, he stated, counselling of the inmate becomes significant, especially in the case of social wrongs such as dowry and child marriage, which must first be addressed, before re-integration of the inmate into society can be possible. Correction is thus the aim.

The focus areas that then emerge include the physical and mental health of prisoners, and the hygiene and sanitation facilities available to them. Yoga may be a way of attaining spiritual health, but this has to be integrated with the physical aspect as well. He spoke of previous experiences of visiting correctional homes, where open drains and electricity shortage, all led to appalling conditions for the inmates to live in. Even incarcerated people, he noted, retained their rights under Article 21 of the Constitution.

A second focus area that emerged is the issue of access to justice. He noted the unfortunate lack of availability of legal services, recounting in particular an incident where he had found over 700 petitions that had been pending filing before the Supreme Court, for as much as 10, 20, or even more years, by which time the person undertrial could have completed the full term of his sentence. He also noted that video conferencing in jails has not been implemented to the extent it should have, despite training programmes in the National Police Academy, Hyderabad. Sensitisation of prison staff is thus a significant requirement, as are channels of communication between a prisoner and his family, or his lawyer. While highlighting the importance of more efficient communication, he narrated an incident where, during his tenure as the Chief Justice of the Gauhati High Court, he had found something lacking in evidence in one particular case. Requesting the Legal Aid Counsel to read out the evidence available, it emerged that proper instructions had not been received. The matter was then taken up after lunch, where the prisoner was able to point out the evidence, instructions were given, and the matter properly heard thereafter, with the case itself resulting in a conversion of charge under Section 302 of the Indian Penal Code ("IPC") to Section 304.



As a third area of focus, Justice Lokur pointed out the need for care of women inmates, and their children, specifying that different needs exist when grappling with issues related to the same. Sanitation in women's prisons, for instance, needs to be adequately taken care of, as menstrual health, and the rights of the children kept with their mothers, are not properly dealt with. He also noted the issue of education of these children and the need for a child-friendly staff in observation homes. India, as a signatory to the United Nations Convention on the Rights of the Child, 1989, has a duty to uphold provisions of the same; but the question still remains as to what extent have these been implemented?

On a concluding note, Justice Lokur reminisced about his desire, as a then-newly appointed Judge of the Supreme Court of Fiji, to see the court library. However, this did not happen for several days, until it finally emerged that the reason he was not let inside the library was that there were plenty of inmates there, conducting their own research into cases. This, he noted, was the kind of rehabilitation that the inmates had access to, which the prison reform system in India may note.

#### **1.4 Speech by Justice Kotishwar Singh, Judge, Gauhati High Court, and Executive Chairman, Assam State Legal Services Authority**

Justice N. Kotishwar Singh gave a new direction to the on-going deliberations. Greeting the audience and his fellow panelists, he emphasized on the need to discuss the social life of inmates. Justice Lokur, he noted, had been a tremendous asset to the criminal justice system, having introduced e-Court facilities, and giving a stimulus to the juvenile justice mechanism. He believed that the vision behind this discussion should be to make access to justice more meaningful. He further stated that he had taken to the dais in his capacity as the Executive Chairman of the Assam State Legal Services Authority, and not as a Sitting Judge of the High Court.





He led the discussion towards the need for training of jail staff and the provision of facilities for them. Further emphasizing the words of the Hon'ble Chief Minister of Assam, Justice Singh asserted that meditation brings peace of mind in meeting challenges. He also said that the law is for everybody, inclusive of prisoners. A crucial element of the Constitution of India is its Preamble, sometimes ignored by law students and professionals, but containing the phrase, 'assuring the dignity of the individual'. He believes that the same applies to all inmates and law must guarantee that. He cited the case of *Sunil Batra v. Delhi Administration*, as reported in (1978) 4 SCC 409, wherein it was observed that prisoners are individuals and they are entitled to Fundamental Rights, subject to some restrictions. This case, he said, had led to the development of Human Rights in India. Justice Singh reminded all that dignity cannot be compromised and there is a need to galvanize the Legal Services Authority. The ASLSA is not a part of the Judiciary and serves as an independent authority established through a statute.

Justice Singh also referred to the need for legal assistance to the accused's family members. They shall be made aware of the legal remedies. Sometimes, no other source of income remains which becomes a big hurdle for the family to run. Thus, with these lines of discussion, Justice Singh concluded his address.

#### **1.5 Address by Dr. Ramesh Chandra Borpatragohain, Advocate General of Assam**

Dr. Borpatragohain in his speech congratulated the Hon'ble Chief Minister of Assam under whose leadership, the system of reformation, not only in jails but for the criminal justice system is moving in the right direction. As a student of law, Mr. Borpatragohain terms the phenomenon as a lateral process of approaching the issues and progress in society. The Correctional Homes are established to correct the mental state of the inmates just like a Hospital takes care of physical health. Thus, two interests need to be taken care of: one is the human rights of the society and the other is the human rights of the individual inmates. Based on the damage to the social order caused by them, they are proportionately punished. Punished in the sense that they are confined to a particular area and made to undergo the process of reformation. He refers to four stages of development of personality. Firstly, there exists a vital personality determined by



the state of our living, due to the presence of reason, there develops a mental personality, based on situations and varied circumstances, there is the development of intellectual personality and lastly, what yoga and pranayama affects is the spiritual personality. His second proposition is that reformation can never be one-sided. We might have developed the spiritual personality of the inmate but what needs to be secured is the societal acceptance of the individual after his release. Often, such individuals revolve back into the same cycle as they are not accepted back. He went on to say that the human mind is full of creativity and innovation. This trait must be put to the benefit of society. Thus, Mr. Borpatragohain went on to claim that such individuals must be produced by the jails that they are deemed to be ideals for others to follow. Lastly, Mr. Borpatragohain said that the world follows words. Thus, our efforts should be to transform the written or said words into action to mark the conclusion to his address.

#### **1.6 Vote of Thanks by Ms. Barnali Sharma, Inspector-General of Prisons, Assam**

Ms. Sharma greeted all panelists and participants presents. She stated that November 23, 2019 shall be a red-letter day for all inmates across jails in Assam. She expressed her gratitude to Mr. Sarbananda Sonowal, Hon'ble Chief Minister of Assam for his presence and participation on this occasion that shall signify the emphasis that the Government and civil society wish to bring towards the welfare of the prisoners. His presence, in spite of his busy schedule, is a testament to the importance that is attached to the commitment of the State towards the betterment of prisoners. She acknowledged the presence of Justice (Retd.) Madan B. Lokur, former Judge of the Supreme Court of India and presently Judge at the Supreme Court of Fiji. Ms. Sharma states that his valuable speech will continue to be a source of inspiration and constant support to all participants and dignitaries present. She also offered her regards to Justice N. Kotishwar Singh, Judge, Gauhati High Court. In her opinion, his address has encouraged all the concerned stakeholders to reflect and provide fruitful interventions in way of prison reforms. Ms. Sharma went on to thank Dr. R. C. Borpatragohain, Advocate General of Assam for his valuable insights on prison reforms. His presence, she acknowledged, had raised the bars of the auspicious event. She offered her gratitude to Shri Apurba Kumar Sharma, Executive Chairman of the Bar Council of India whom she congratulated for achieving great heights in his profession and making the





state proud. She confirmed that with his support, a lot of progressive changes would be possible to realise.

Thereafter, Ms. Sharma acknowledged the efforts and leadership shown by Mr. Nilay Dutta, President, Studio Nilima and Advocate General of Arunachal Pradesh in the organisation of the auspicious event. She lauded the efforts made by Mr. Dutta in this field through the organisation of Studio Nilima and offered her regards to the team from Studio Nilima for its efforts in making the event possible. Ms. Sharma offered her heartiest thanks to all the participants, without whom the said event would not have been possible. Ms. Sharma, lastly, thanked Shri Shantanu Bharali, Chief Legal Advisor to the Chief Minister of Assam, who in spite of not being able to attend the inaugural ceremony due to a prior engagement, has rendered immense support through his constant involvement and constructive feedback. She also expressed her gratitude to the ASLSA for its valuable support, the Director and staff of Assam Administrative Staff College for their cooperation and all the representatives of correctional homes who were present during the workshop. She concluded by stating that if all the stakeholders mirror the goodwill which has been expressed by the Chief Minister on behalf of the government, the correctional homes in Assam could set an example not only for the State but for the country.



**Day 2: November 24, 2019**

The anchor for the programme, Ms. Rakhee S. Choudhury, welcomed all the dignitaries and guests to the first working session of the workshop. Explaining the modalities of the session, Ms. Choudhury introduced the agenda for the day, which was divided into four working sessions. The first session was on Access to Justice, which would have an interactive session, following an address delivered by Justice (Retd.) Madan B. Lokur. The second working session was on Free Legal Aid and Jail Appeals to the High Court and Supreme Court, addressed by Justice N. Kotiswar Singh. Post lunch, the third working session was on Reformation and Rehabilitation in Correctional Homes, delivered by Justice Suman Shyam, and the fourth working session was on Crime, Prison and Radicalisation, delivered by Shri Hiren Chandra Nath, Inspector General of Police (Special Branch), Assam. Thereafter, an interactive session would be scheduled where a panel of experts would address the questions of the participants.

The anchor welcomed the incumbent panellists, as well as the new members who had joined on the second day. Mr. Apurba Kumar Sharma, Member, Governing Council, Studio Nilima and Chairman (Executive Committee), Bar Council of India, felicitated Justice Suman Shyam who had joined the workshop on that day. Following that, the anchor requested Mr. Dutta to take over and introduce the panel of dignitaries.

At the outset, Mr. Dutta welcomed all present to the workshop. He announced that the manner in which the session shall be conducted would be different from the traditional lecture format. An interactive session would follow after every session, wherein questions shall be put from both sides, and a two-way discussion will be encouraged. The panellists shall entertain questions and in return, expect the jail staff and representatives from DLSAs to answer their queries. Mr. Dutta also welcomed the twenty DLSA officers and senior officers of the ASLSA. He set the stage for Justice Lokur's address, requesting that Justice Lokur guide the learned participants on how to comply with the orders of Supreme Court on prison reforms. He led the participants to refer to page 1 of the Reading Material, which contained a summary of the series of orders of the





Supreme Court in *Re Inhuman Conditions in 1382 Prisons*, W.P(C) 406/2013, in connection with maintaining proper standards of jail administration, various responsibilities of the jail and DLSAs. It was also recognised that the Model Prison Manual 2016 has not been implemented in the State of Assam. A state committee has been constituted but its progress is not available in the public domain. This status quo and lack of proactiveness in not adopting the Model Prison Manual has left the statutory framework governing prisons within Assam in the 19th century as most of the statutes such as the Prisons Act are colonial instruments.

## 2.1 Working Session I

### Theme 1: Access to Justice

Address by Mr. Justice (Retd.) Madan Bhimarao Lokur, Former Judge, Supreme Court of India and presently, Judge of the Supreme Court of Fiji.

Justice Lokur commenced his address with the topic of what the prison staff and DLSAs could do to make the lives of inmates more comfortable. It must be studied as to what compels an individual to commit an offence. He recounted an instance wherein a person had killed his four daughters, and on being interviewed by researchers, it emerged that his wife had not been keeping well. Being a daily wage earner, he could not afford the medicines, and she passed away. Thus, he had to maintain his daughters alone and his biggest cause of worry was that they had to be left alone, making them vulnerable to predators in the village who might use the opportunity to exploit them. To his mind, the best way to protect them from the threat of such atrocities was to kill them. Thus, there is a need to study the mind of an individual in such cases, before questions of treatment and reformation can be delved into. It must be noted herein that the motivation to commit an offence may be traced back to a variety of issues like financial constraints, domestic constraints, societal perceptions, etc.

He reiterated that overcrowding continues to be a problem in India's correctional homes. The National Crime Records Bureau supports this claim with a country wide figure of 116%. The occupancy percentage at the Jail Complex at Tihar, supposed to be one of the best correctional



homes in Asia, is 140%. He proposed the collection of data regarding each prisoner, including the status of their court appeals, keeping in mind that a majority of them are under trial prisoners. Prisons Information System developed by the National Informatics Commission is in use in certain jails like Tihar where even misbehaviour of the inmate can be recorded. Under the same mechanism and the E-courts Project, every jail has been given a computer, making it easy to collect and retrieve data.

The second issue dealt by him was the Under Trial Review Committee ("UTRC"). He mentioned that unfortunately, in many parts of the country, the direction to set up Under Trial Review Committee has not been followed and its meetings have not been taking place. The idea behind this committee was to ensure that people who do not need to be in custody shall not be inside jails. He further noted the difficulties faced by inmates from lower economic backgrounds in payment of the high surety amounts which are often imposed by courts. Referring to Section 436A of Code of Criminal Procedure, 1973, he states that the law allows a person who cannot afford the imposed surety amount to be released on Personal Recognizance Bond within a week. He enquired of the participants to reflect on whether the same has been adopted as a practice. Justice Lokur added that developing a practice of Preliminary enquiry is important and in his experience, counselling has also had a positive impact. He advised that UTRCs and jail authorities must not wait until half of the sentence is over, adding that it is the mandate of the Legal Services Authorities to ensure that competent lawyers are engaged, and to move the Court on the recommendations of the UTRC. The Courts would no doubt take up such cases enthusiastically.

His third concern was the release of prisoners if they were granted bail. This has been stated as one of the prime concerns of the UTRC. He mentions an instance in Delhi, where a person filed a case against jail authorities for being retained in custody in spite of not being able to pay surety. He was awarded a compensation of one lakh rupees (approximately) by the Delhi High Court. With this, he moved on to the topic of counselling of inmates. Stating that every inmate is





not a hardened criminal, he emphasised on the need to analyse the underlying factors that have made an individual commit the offence.

He also referred to the Hon'ble Chief Minister's words on the need for Reformation and Rehabilitation. Efforts need to be made to make sure that the same wrong is not repeated. Justice Lokur also asserted that no individual is a born criminal, it is the society that makes him one. He insisted that educational institutions and university departments of psychology and social work need to be involved in the process of counselling.

His fifth proposal was that there must be a Board of Visitors as ordered by the Hon'ble Supreme Court of India. Its role is not one of mere supervision but of facilitation. He recognised the problems that exist for jail officials. As the board of visitors are part of civil society and have no interest in inmates individually, they can act as spokespersons for the jail staff. All the infrastructural and financial problems that are generally felt by staff at the correctional home level can be pursued by them. There are also administrative issues such as in a specific case, in certain correctional homes in Northern India, the provision of 'mulaqat' was offered on a preferential basis to some inmates, leaving aside others. In such cases, the Board may act as a forum for the inmates to agitate their issues and complaints at the correctional home level.

The sixth proposal laid out by him was to conduct a detailed social audit of each prison and also the system as a whole in line with the directions laid down by the Supreme Court in *Re: Inhuman Conditions*. There are perhaps more than thirty districts in Assam with 31 existing jails, and a team visiting all jails may even complete the same in a month or two. This team shall be able to look into infrastructure, finance, health, hygiene and sanitation. He brought into discussion the provision for social audit under the Mahatma Gandhi National Rural Employment Guarantee Scheme. If the detailed guidelines for a social audit are actually implemented, it would enable all the stakeholders to identify the existing conditions behind the walls of the prison.

Justice Lokur also stated that as a part of the Supreme Court Legal Services Committee, he had asked a Professor at National Law University, Delhi to carry out an audit of the jails. This shall help us know if the system has been able to solve the actual challenges in jails. He advocated for the intervention of the civil society to enable them to understand the pending issues and to suggest reforms. He also mentioned his visit to an Observation Home for boys in Jamshedpur several years ago, where he had found severe sanitary and infrastructural deficiencies, with the lack of running water, and no access to electricity. It was told that the one bulb being used had been fitted only due to his visit, with no other lighting facility being present at other times. He suggested that such conditions could become breeding houses for hardened criminals. The audit is, therefore, a very important aspect of strengthening the system.

The seventh proposal was adherence to the Model Prison Manual. It was found that the Ministry of Home Affairs was taking too long to revise it even with the intervention of the Supreme Court. It must be kept in mind that the Prisons Act itself is a colonial act. A lot of it has become redundant and vague in the current scenario. British colonial ideology need not be followed today when it comes to dealing with correctional homes. Noting that the Model Prison Manual 2016 might have its own shortcomings, the Supreme Court also passed orders for its periodic revision after one year of implementation. However, no follow up in this regard has been done. He was surprised to know that it had not been adopted in Assam. The idea is to ensure that prisoners must live a life of dignity. The same document could help improve the facilities of the jail staff as well. He also mentioned international conventions like the Nelson Mandela Rules framed by the United Nations on prisoners which had been internationally recognised. There are rules framed by the Red Cross as well. The rules have been accepted worldwide and are created by century-old organisations who have no vested interest in the matter, it is therefore essential to consult such documents for an effective understanding of the international standards in prison management and reforms. With reference to the said international agreements and the Model Prison Manual, he urged the jail staff to take cognizance of these standards and work in fulfilling them.





The next proposal was to pay special attention to women and children. Often, women, having special needs, are ignored due to their minimal representation. He advocated that the life of dignity was not only for men. Justice Lokur implored the authorities should go beyond the strict mandate of the law and explore innovative possibilities such as installing vending machines for sanitary pads in correctional homes as had already been done in some courts. He also commented that Assam is a progressive state from his own experience. He, therefore, believes that Assam can take the lead in this regard to look into the needs of female prisoners. The second aspect of it was addressing the needs of children of these women in incarceration. They need to be provided with quality education. On the 30<sup>th</sup> anniversary of the Convention on Child Rights, 13 children had been selected from various parts of the country. One observation made by Justice Lokur was that want for education was common to all these children. They questioned why the Right to Education only secures their educational prospects until the age of 14. He suggested that the administration should attempt to bridge the line of education for children after they leave the jails at the age of 6. Thus, the children growing in jails without proper education shall disable themselves from breaking out of the vicious circle of crime and poverty and eventually bring them back to the same place. He stated that he was glad about the various activities going inside Assam's correctional homes to help inmates sustain themselves through self-employment.

Lastly, Justice Lokur stressed upon legal aid and advice. He urged Justice N. Kotiswar Singh who is serving as the Executive Chairman of the Assam State Legal Services to look into it. Highlighting the various arenas where legal services may be needed for inmates, he referred to a case in Delhi where a person was awarded a long sentence of incarceration. He wanted his heirs to look after his small business as he would have no means of sustenance upon his release without his business remaining functional. In this case, the legal aid counsel assisted him in transferring ownership of his business to his sons and ensured that his roots from society did not get severed because of his incarceration. It is therefore important to recognise the need for legal assistance in all its forms and evolve mechanisms by which the Legal Service Committees can enable it. He also told the participants about the huge number of cases of parole applications that used to appear before the court in the monsoon season on account of the need for renovation of



their homes. The idea behind the same was not to destroy their life because they are in jail. Their familial obligations had to be recognised. An application for parole on account of a wedding took so much for clearance that the wedding was over. Thus, legal aid for filing an appeal and petition is a very important part of the process. He also found a case the previous day when the Special Leave Petition was not filed for many years and later, there was the engagement of private counsels by selling all properties. From this, we wished to stress upon the heavy responsibility that exists upon the Member Secretary of the Legal Service Authority of ensuring that committed and sincere lawyers are appointed. He also talked about the Video Conferencing facility that was introduced in New Delhi. This enabled the inmates to interact with their representing counsels. He also stated about the appointment of Justice Amitava Roy as mentioned in the order of the Supreme Court dated December 13, 2018, to look into all the issues raised in the application in greater depth in addition to the Terms of Reference.

Referring to the Reading Material, he requested all to turn to the page which discusses the composition of UTRC. Justice Lokur then took the attention of the participants through several important orders of the Supreme Court and cited relevant paragraphs from the reading material.

He also referred to the Order of the Hon'ble Supreme Court dated 31.10.2019 in which the new detention centre in Goalpara had been mentioned. The need for availability of Liquefied Petroleum Gas was felt. It also mentioned that the separation of families was not required. He urged all to look into such issues with compassion, irrespective of who the beneficiaries are. Finally, he insisted on the use of technology in the form of the eCourt system, through which computers have been given to every jail. With this, Justice Lokur concluded his speech and conveyed his best wishes to the officers and staff of the correctional homes in their work.





### Interactive Session

Mr. Mrimoy Kr. Dawka from Central Jail, Tezpur recommended that the Bail orders be given before 12 noon instead of afternoon. This shall enable them to get speedy clearance and avoid unnecessary delays in implementing bail orders on time. He also stated that monthly counselling is done in Central Jail, Tezpur. Justice Lokur replied that the bail orders can be communicated by email and certified copy may reach later, so that they may ensure the issue is sorted out on time.

Another issue raised by one of the DLSA representatives was that of the remission applications, which were not processed on time on the administrative side by the government which leading to complaints by inmates, some of which are addressed to the DLSA. Justice N. Kotiswar Singh advised that in such cases the ASLSA may be informed with the particulars of the case who can then take it up with the government at the appropriate level.

One of the points of discussion was that officers of the ASLSA including the Member Secretary have been visiting most of the correctional homes in the State. One of the recurring observations has been that the infrastructure in most correctional homes remains deplorable and the most common complaints of the jail authorities remain the lack of available funds. In this regard, the specific example of the Mahendra Nagar Open Air Jail at Jorhat was cited which in spite of having at its disposal huge open areas has only 15 convicts and no proper agricultural implements for them to be engaged in gainful cultivation.

The Ms. Barnali Sharma, Inspector General of Prisons ("I.G Prisons") stated that adequate funds have been allotted to the department for infrastructural development. The main problem lies in the lack of coordination between the Executing Authorities and Utilising Authorities. The I.G Prisons also stated that two meetings have been convened at the highest executive levels in the last 15 days to sort out the problems. Justice Singh observed that during his visit to Central Jail, Guwahati, there were complaints by the Medical Officer that he was overburdened with work and was not able to avail leave due to the absence of an adequate number of medical personnel. Furthermore, the compounder who administered injections was not adequately trained and a lack



of ambulance facilities was widely felt. The I.G Prisons stated at this point that a proposal for 31 ambulances has been made to the Government afresh.

The interactive session also saw specific issues like the transfer of certain convicts from Arunachal Pradesh in District Jail, Lakhimpur and need to ensure more food suppliers to correctional homes apart from ensuring diet allocation as per body mass index and not per head being discussed. It was resolved that these issues will be taken by the Assam Prison Headquarters with right earnest.

## **2.2 Working Session II**

### **Theme 1: Free Legal Aid and Jail Appeals to the High Court and Supreme Court**

Address by Mr. Justice N. Kotishwar Singh, Judge, Gauhati High Court and Chairman of the Assam State Legal Services Authority

Ms. Rakhee S. Chowdhury, the anchor, welcomed everyone back after a short break, which was followed by Justice N. Kotiswar Singh's address on free legal aid/services and jail appeals to the High Court and Supreme Court. Justice Singh started with a presentation about the mandate of the Legal Services Authorities and the constitutional and statutory framework which governs them.

He opined that many stakeholders did not fully understand what this institution is and where the concept of free legal aid is derived from. He took everyone's attention to the Legal Services Authority Act, 1987. He highlighted the Preamble of the Act through which he sought to make everyone understand that "free" legal service does not imply the idea of "free" in the commercial sense. Free legal services and access thereto is ultimately a matter of right and it is a natural corollary that such services must be effective and competent along with being free.

It is important to note that there exists a huge role for counsellors in this process who ensure sensitization of the people about the concept of free and effective legal services. Justice Singh





suggested that Studio Nilima must facilitate a similar conference/knowledge-sharing platform with the Department of Social Welfare, Government of Assam who is an important stakeholder in this matter.

He explained the three-tier system that had the National Legal Services Authority on the top, followed by the State Legal Services Authority and District Legal Services Authority. He also announced his intention to expand the same at the Taluka level in the near future. He also reminded everyone that this institution is not under the judiciary but established through an independent statute. By convention, he said that the senior-most judges are considered for the position of Executive Chairman to ensure the direct link with the High Court. This is further facilitated by having a sitting judge. In Assam, Regulation 7(2) of the Assam State Legal Services Authorities Regulation, 1998 provides that the High Court Legal Services Committee shall consist of the following members: A sitting Judge of the High Court to be nominated by the Chief Justice, Gauhati High Court; the Advocate General, Assam; the Chairman or any other Member of the Assam Administrative Tribunal; the Chairman or any other Member of the Assam Board of Revenue; the Secretary to the Government of Assam Legislative (LW) Department; Registrar General, Gauhati High Court; and the President, Gauhati High Court Bar Association.

He emphasised on the need for representation of the Revenue Department for better coordination. Referring to Section 8 of the Legal Services Authorities Act, 1987 which talks about the mandate of the SLSA to act in coordination with other government agencies, non-governmental, voluntary, social services institutions etc, he stated that he was happy to cooperate in this endeavour of a non-governmental organisation in curating such a workshop. He expressed his intention to ensure that the DLSA meetings take place regularly. Often, it was found that the Deputy Commissioners and Superintendents of Police expressed surprise at their inclusion. This was due to a lack of awareness which can be tackled with effective awareness.

Justice Singh's presentation contained discussed the functions of the Assam State Legal Services Authority and recognised the efforts of the paralegal volunteers. He also stated that Legal Aid



Clinics have been set up in police stations, jails and legal literacy clubs in law colleges. He further added that the Paralegal Volunteers are the basic unit of the legal services mechanism due to which it needs to be strengthened. Due to limited manpower of the DLSAs, such volunteers play a crucial role. Justice Singh also stated that they have been able to identify literate inmates who display a sense of duty and leadership who are then trained. As of now, they are being paid Rs. 500 per day for their contribution.

He provided the following figures in which it stated that the total number of Legal Aid Counsels under the Supreme Court Legal Services Committee is 81, the Gauhati High Court Legal Services Committee is 21, District Legal Services Authorities in Assam is 780 and Assam State Legal Services Authorities is 83. Justice Singh also noted on the difficulty in identifying competent lawyers. Many challenges arise in this process. He applauded the efforts put in by Studio Nilima in compiling the orders passed by the Hon'ble Supreme Court in the *Re Inhuman Conditions of 1382 Prisons* case. The efforts to provide valuable inputs, data and affidavits have helped immensely. He requested all participants to go through the orders.

Justice Singh also spoke on providing legal assistance to the family members of the prisoners. He drew everyone's attention to the scheme titled A Campaign for Legal Assistance to Family Members of the National Legal Services Authority ("NALSA") in 28 jails of Assam conducted from April 2019 to September 2019. During the last several years, the efforts of the DLSAs in Assam have been recognised and the State has been awarded best zone amongst others in the Northeast zone by the NALSA. He reiterated that the collaborative efforts with the Department of Social Welfare must be arranged so that the introduction of schemes for women and children in jails is required. If such schemes exist, they shall be implemented within jails as well. He also spoke on the need for the introduction of the Model Prison Manual and urged Studio Nilima to take up a project on the same.

He also spoke about the possibility of using the video conferencing facilities to connect with family members of the inmates. Here, responsibility for the prevention of its misuse shall lie





upon the jail administration. He also reiterated the need for social audit of the prisoners. He believed that the role of the Social welfare department is essential in this regard.

He informed that there are 1412 pending legal aid cases in Assam. As per Gauhati High Court Rules in Rule 18 and Rule 19, it has been mentioned that for jail appeals, the relevant information shall be disseminated to the concerned jail administration. Normally, two kinds of systems are present for entertaining jail appeals which were explained. In one system, the Superintendent of Jail forwards a letter, which goes to Criminal Appeal section and then, is placed before Court. Subsequently, the Court appoints an Amicus Curiae or Legal Aid Counsel to look into the matter. However, the same practice has no statutory foundation. In the other system, the High Court Legal Services Committee or the State Legal Services Authority receives letters from inmates/family members. If determined as feasible, directions for papers are sent to the concerned DLSA and a subsequent request is made to the concerned jail. Accordingly, the Counsel appointed argues the matter.

Speaking on the existing issues between coordination of Jail Superintendents and Legal Aid Counsels, he believes that the scenario has greatly improved. This calls for reforms within the State Legal Service Authority. He also stated that everyone must make gainful use of the National Judicial Data Grid ("NJDG") and its various features. Calling it a minefield of knowledge and data, he explained that the convict himself or his family members can know the next date of the matter and its status without being dependent on anyone else. Thus, the need for making people aware of this important platform is felt. This shall immensely help all officers and authorities involved including the DLSA and jail staff. There is a strong need to inform, train inmates, officers etc. If access to a computer is given for the said purposes, the pressure on the Legal Aid Counsels can decrease.

It is the unfortunate reality that with such nominal fees being paid to the Legal Aid Counsel, they are hardly induced to visit jails located far off to meet their clients. This can be addressed to some extent by introducing better video conferencing facilities. This will also save a lot of



hassles incurred by a lawyer due to the long protocol to be followed to initiate a video conference consultation with a client in jail. Reliance on Paralegal Volunteers has to be maximised and their efforts recognised. Referring to the statement by the Inspector General of Prisons that there exists no shortage of funds for infrastructural development, he says that the same does not hold to the Assam State Legal Services Authority.

As far as the appeals lying to the Supreme Court through the Supreme Court Legal Services Committee is concerned, the State Legal Services Authority only has a minor role of preparation and forwarding of details. He stated that one may approach the body directly. However, he brought to the notice of all that there is a translation department under the State body (ASLSA) to facilitate the preparation stage. As far as to appeal to Supreme Court Legal Services Authority is concerned, they have no direct role except for forwarding, preparation of relevant documents, and translation for expeditious processing.

Justice Singh further went on to state that the issues relating to appeals, were caused due to lack of legal information and awareness about the right to appeal against conviction, lack of awareness about entitlement to free legal aid, lack of interaction with the empanelled lawyers representing them before the Supreme Court and the High Court, lack of information about the status of their appeals/Special Leave Petitions/bail applications etc.

He noted that with the interest being demonstrated by the Hon'ble Chief Minister himself, there should not be major impediments in improving the infrastructural concerns. With a liberal and informed use of the NJDG, issues relating to access to information can be solved at the ground level. However, information gap with regard to parole, commutation of sentence, remission etc. has to be clarified by the authorities like DLSAs. This is all the more important because many of the above issues are subject to the control of the Executive and is awarded on occasions like Republic Day. Justice Singh opined that since the executive authorities are overburdened, there is a need for sharing accountability at every stage. The Secretaries of the DLSAs were urged to visit the jails regularly as it would be of significant help to the Superintendents. Reminding the





participants of the words by one of the founding fathers of the Constitution, Mr. B.R Ambedkar that if the Constitution fails it will be because of functionaries who man these institutions, he urges everybody to take responsibility for the smooth running of all institutions.

He also raised his concern that there no Criminal Jail Appeals had been disposed off in 2019 and expressed the need for the Gauhati High Court Legal Services Committee to look into it. Again referring to the reading material prepared and distributed by Studio Nilima, Justice Singh noted that important judgements have been covered. He urged all the participants to focus on the orders and find all the laid down principles that govern prison jurisprudence. In conclusion, Justice Singh called for better coordination between Jail administration, Legal Services Authority and the Government, especially the Department of Social Welfare, Government of Assam which shall play a role that will elevate the condition of the jails.

#### **Interactive Session**

With the end of the address by Justice Singh, Mr. Dutta initiated the discussion with certain remarks. He stated that the major problem is not with the functioning of the High Court but the transmission of dismissal orders to the concerned inmate. Once the case is dismissed, the amicus in the matter does not have any interest in the matter as does the value is given by the Registry for a dismissed appeal and thus, no communication is to the inmate. After much delays when it reaches, the time for filing of Special Leave Petition has elapsed. Hence, the application for the delay is needed, creating additional hurdles. One important case that he brought to everybody's attention was that of *Reena Hazarika v. State of Assam* as reported in 2018 SCC OnLine SC 2281 which gave a new direction to criminal trials in India. Justice Navin Sinha and Justice Nariman was surprised to note the delay in the case. In a report by the National Legal Services Authority, when a High Court judge dismisses a case, the right to appeal of the inmate must be communicated to him. Due to non-compliance of the same, Reena Hazarika had to wait for 8 months unnecessarily. The system faces a huge flaw due to this. Mr. Dutta requested the High Court Legal Services Committee to look into it.



Secondly, commenting on the remission procedure that involves good conduct, he argued that only jail officers would know of an inmate's conduct, and involving the District Judge and the District Magistrate in the process makes it unreasonable. He expressed his willingness to take up the same with the government as it would require legislative measures. At most, the local police officer would know the post-release ramifications. There is a need to examine this provision. With regards to the Model Prison Manual, he pointed out that Studio Nilima had faced resistance in the dissemination of the translated Model Prison Manual as there was a perception among certain authorities that it came under the Official Secrets Act. Further on the same issue, he stated his agreement with the views of Justice Singh. He also said that he had received assurance that the Hon'ble Chief Minister of Assam will take up this matter personally. He pointed out that there were several concerns with regard to the issue of accommodation of the Declared Foreign Nationals and expected legislative intervention on the same.

With regards to the issue of Board of Visitors, he posed a question to the house regarding whether district-level Board of Visitors had been instituted in Assam. On having got a negative response to it, he informed how the same has been violated for the last 3 years. Lastly, welcoming the suggestion by Justice Singh on collaboration with the Social Welfare Department, he opened the floor for questions and comments.

One of the DLSA Secretaries stated that in case of appeals to the Supreme Court, there is a requisition for the income parameter that is conventionally established through land documents, which he believes should change, as it is difficult for incarcerated persons, especially from underprivileged backgrounds to obtain such documents. To the same, Justice Singh responded stating that jail appeal to the Supreme Court is a second-tier of the procedure and that there is already a Jail appeal procedure at the High Court where one level of the verification already happens. Justice Singh also said that the concerned inmate is unlikely to improve his economic condition inside the jail. Thus, such issues shall not arise in the High Court, in his opinion.





Member Secretary, Assam State Legal Services Authority further added that the issue with dismissed appeals has been discussed with Secretary of the Gauhati High Court Legal Services Committee. He also stated that the appointment letter includes intimation of the result by the Legal Aid Counsel. He hoped that the DLSAs could take up the above-mentioned suggestion. Justice Singh responded that orders are usually uploaded on the internet, keeping in mind occasional delays that may arise. He instead suggested the use of the NJDG to overcome any such shortcomings.

Mr. Dutta raised a question to inquire about what Jail administration does when an appeal is dismissed. The jailors in unison stated that the order is read out and their signature is taken. They are also informed about their right to appeal. On asking where the delay takes place, the jail staff responded that the orders from the High Court are delayed. Justice Singh narrated an instance wherein he visited a Legal Aid Clinic inaugurated by former Chief Justice of India Justice Ranjan Gogoi in Dibrugarh. He found that a computer was present but it has no connection to the internet, making it useless. He stated that if the National Legal Services Authority fails to provide funds, assistance from the State Government has to be sought. Most of these problems can be solved at the Legal Aid Clinics itself. Make sure that the Legal Aid Clinics with computers and internet is provided, then all this trouble can be solved to a great extent. Justice Suman Shyam questioned if the same meant that the release is delayed because the court order does not arrive. He stated that when there is a case that the Court decides for acquittal, the orders are sent as soon as possible by the Court. Mr. Dutta responding to the same stated that the issue was not on the case of acquittal, but when there has been the modification of the period undergone, it is not executed until the procedure is finalized.

DLSA Bongaigaon complained of the delay in filing of appeals as a major hurdle. In a case of Nagaon, concerning a dismissed Jail appeal, the jail authorities received a communication from defence counsel asking for certified copies of deposition. However, no direction was issued from the court for the same. It was difficult to furnish certified copies only on request of a lawyer. There was no communication for the same done to the DLSAs. This issue can be resolved if



DLSAs are emailed about the same, he suggested. He highlighted a case from Bongaigaon where a Jail forwarded appeals directly, but no true copies of depositions were available. That jail communicated to the DLSA who in turn applied to the Additional District Judge, it was found that the true depositions which were supplied did not match the actual case.

Mr. Dutta suggested that this issue could be solved by sending down the paperbook of the dismissed case to the concerned DLSA which would later come in use when the inmate decided to prefer an appeal to the Supreme Court. He suggested a mechanism wherein the DLSAs could be sent a copy of the order of dismissal apart from one being sent to the concerned jail. A representative from District Jail, Jorhat enquired if appeals could not be made to the Supreme Court Legal Services Committee directly without going through the State Legal Services Authority. Mr. Dutta responded that it is possible to approach the Supreme Court Legal Services Authority if all documents are ready. DLSA Bongaigaon stated that recently, in a conference, the Director, National Legal Services Authority, insisted that DLSAs should write directly to the Supreme Court Legal Services Committee as that saved crucial time.

### 2.3 Working Session III

#### Theme 1: Reformation and Rehabilitation in Correctional Homes

Mr. Justice Suman Shyam, Judge, Gauhati High Court

Ms. Rakhee S. Choudhury welcomes everyone to the session and requests Justice Shyam to address the gathering. After greeting the esteemed panellists and learned participants, he started by stating that correctional homes have been a great concern across countries. He congratulated Studio Nilima for the efforts to organise the workshop, acknowledging novelty in the effort. He also said that the major areas regarding the agenda have been already covered by Justice Lokur and Justice Singh. He talked of his intention to modify his speech in order to avoid repetition, and expressed his intention to discuss the ground level issues with some degree of analysis. Keeping in mind that the topic pertained to reformation, rehabilitation and perspectives on sentencing policy, he mentions that sentencing in the criminal system is a form of punishment. He commented on the development of the concept of punishment, beginning with horrific





methods and even capital punishment, which aimed at retribution. With the advent of civilisation, these were gradually substituted with lighter forms of punishment. There was a paradigm shift in the concept of punishment that moved its focus from crime to the criminal. Today, the concept of punishment follows the principles of deterrence and reformation. He expounded upon these, as well as on the preventive, retributive, and expiatory theories of justice.

He stated that the concept of punishment is not new in India. Its origin could be traced to ancient texts such as the Manusmriti and the Holy Quran. He also made a reference to Section 53 of the Indian Penal Code that deals with forms of punishment. He observed that 4 out of 5 of them are done with either death or imprisonment for life. Out of all, he reaffirmed that Reformatory theory is what guides the system of Criminal Jurisprudence today. He further added that unlike in the United States of America and the United Kingdom, we have no legislative mandate on sentencing. Citing the case of *Soman v. State of Kerala* as reported in SCC 2018 SC 382, Justice Shyam lamented the lack of sentencing policy and quoted the phrase “weakest part of criminal policy...” to refer to the lack of sentencing policy. The lack of such legislation brings a huge element of subjectivity in the system. The case of *Bachan Singh v. State of Punjab* as reported in 1980 2 SCC 684, laid down the parameters of the death sentence. In *Mukesh v. State of N.C.T of Delhi* (2017) 6 SCC 1 as reported in case also led to the laying down of some guidelines on sentencing to aid the judges. Justice Shyam mentioned that there has been no proper occasion to go deep into the theory. This has led to sentencing in India becoming a largely judge-centric exercise with a lot of subjectivity, taking into account various factors like proportionality and natural justice. He also noted that in the Indian criminal justice system, the jails are the only means to apply sentences wherein correction of the convicts is the sole purpose of imprisonment. Thus, if the correction fails, the whole criminal system becomes ineffective. He further added that violation of personal liberty under Article 21 is a constituent of every sentence and it becomes a bounden duty to provide them dignified facilities.

Further reiterating the paradigm shift which has undergone in society’s perception of looking at the concept of imprisonment, Justice Shyam stated that the process of rehabilitation of the



convict after he returns from jail becomes critical to the concept of justice. Stakeholders will have to come together and ensure that once the convict leaves the jail, the convict is able to reintegrate into society. He affirmed that getting employment opportunities is practically out of the question due to the social stigma. Due to the apathy of the banks in providing loans to the individual, his vocational skills fail to bear any fruit in his life after his release. He believes that unless some attention is given in this regard, the goal of the Criminal Justice System shall remain unachieved. Jail officers will have to be more sensitive. Justice Shyam believes that the Paralegal Volunteers under the Legal Services Authority must be mobilised to sensitise the society to accept the reformed individual from the correctional home.

Referring to the statement by the Inspector General of Prisons regarding availability of enough funds, Justice Shyam affirmed that it was positive news if it was indeed the case. However, it is unacceptable to compromise on the infrastructural development on account of lack of coordination even with the availability of funds. He refers to the best practices adopted in some jails in the country and expects the same to be done for the jails in Assam.

He also brought in a suggestion for Studio Nilima to adopt with regard to the preparation of a manual for the prison authorities after identifying cottage industries and existing schemes including bank financing that are available for the inmates to pursue after their release. He also stated that reintegration into society is an important part of the rehabilitation process, urging Studio Nilima to come up with suggestions to aid this process. He stated that from the resources made available to him, he concludes that the prisons in Assam are conducting various vocational training programmes including computer literacy, functional literacy, higher education programs under K.K. Handique State Open University, which aim at enhancing employability potential etc. He wished to know if there was any way we could find the outcome of such initiatives post the release of the convict.

As he came across the exhibits prepared by the inmates of various jails put outside the conference hall, he wondered if it was possible to have an earmarked space in emporiums in the





capitals and district headquarters where these objects could be sold in a more effective manner with adequate marketing strategy.

He brought out that in the State of Madhya Pradesh, as a part of the rehabilitation and reformatory programs, Indira Gandhi National Open University has been conducting regular programs and registration under National Institute of Open Schooling. In Maharashtra, there have been efforts for imparting training to inmates in motor mechanics etc. He believes that these models could be tried in Assam. To his knowledge, no concrete scheme for self-employment for inmates in Assam exists until today. He talked about the excellent potential for employment in the weaving industry. He remarked that in so far as questions of jail appeals are concerned, Gauhati High Court has been taking the same very seriously. He stated that the Court is taking up 2018-19 cases, and from the current figure, the Court has 89 Legal Aid Counsels today, who have appointed after a stringent process of selection with one sitting High Court judge in the panel. Referring to Justice Singh's speech, he reiterated that the idea was to substantially improve the quality of legal aid being given. He referred to the jailors as guardian angels and insists that they keep the trust that the system has bestowed upon them. With this observation, he concluded his address.

#### **2.4 Working Session IV**

##### **Crime, Prison and Radicalisation**

##### **Hiren Chandra Nath, Inspector General of Police (SB)**

With reference to the attention given by the Constitution on the subject of prisons, he raised his concern about the fact that the number of undertrial prisoners is increasing day by day. Referring to the United Nations Office for Drugs and Crime Handbook on Radicalisation, he explained the possibility for deradicalization and actions against radicalisation in prisons. He also acknowledged the initiatives in Penal Reform International (PRI) London, Prison Policy Initiative, USA and CHRI India.



PRI organised Preventing Radicalisation in Prisons, (2015) wherein the approach for deradicalization should be on the broad principles of human rights along with compliance to international standards. He also referred to three processes that have acted as a deterrent to the progress of human civilization, which are climate change, terrorism and radicalisation and large scale migration (which he said was a corollary of the first two). Mr. Nath gave a brief definition of Radicalisation which was, "A radical process of indoctrination whereby an individual increasingly accepts and supports violent extremism, the reason behind this process can be ideological, political, religious...."

He considers prisons to be a vulnerable place, as normal freedom is curtailed and the inmates are subjected to protection seekers, insecurity, economic hurdles, uncertain future, social stigma, an inferiority complex and other such experiences. With a humorous reference to how in volleyball, the weakest player on a team is attacked, in the same manner, the target of opportunity seekers is always the inmate as an individual when he is at his most unstable.

He believes that the process of deradicalisation could be spearheaded by prison staff, Government departments and Non Government Organisations. With regard to this, he noted tools for risk assessment being used by prison staff in Europe, Extremists Risk Guidance 22+, developed by the British National Offender Management Services, which assess offenders on 22 cognitive and behavioural factors, and the Violent Extremists Risk Assessment (VERA-2) Protocol, which categorises prisoners into low, moderate, and high risk groups.

With then, Mr Nath moved on to the factors that contributed to radicalisation in prisons, highlighting factors such as a personal sense of injustice, a sense of rejection from a group or society, feelings of hatred or frustration, persecution or alienation, a sense of deprivation, identity conflicts, a sense of superiority/inferiority, religious ideals, or a sense of martyrdom. Any deprivation is to be documented by prison staff. For example, in certain areas, in some cases, schools are not available in some 40 km stretches. Further, while gauging undertrial prisoners, proper documentation of behavioural aspects is to be made. Here, Mr Nath recounted





incidents from his career, trying to note the importance of advance warnings and tell-tale signs of potential radicalisation. He went on to narrate incidents of drugs which were being smuggled into prisons, inside pumpkins, bellies of fish, etc. He observed on this note that prison staff are the biggest philosophers of the country because their job entails trying to correct those people who have been rejected by society. He went on to note how in certain Scandinavian countries, prison rights jurisprudence has developed to such an extent that there is virtually a shortage of prisoners.

He postulated the need for understanding the root of the problem being faced by prison staff, and redressal of the same through adequate training, periodic refresher courses, documentations, and the promotion and development of effective intervention models, to be moulded as per the local requirements.

Mr Nath then moved on to the importance of the capacity building of jail staff, emphasising on the need for access to the requisite tools and understanding and for application of the same in situations. While doing so, it becomes important to improve the overall prison conditions and ensure that adequate and upright staff are present. Proper lighting, perimeter security, and medical facilities also become pertinent factors. Addressing the issue of health, housing, security & welfare of the staff, he recounted an example of Louisiana State Prison where helipads had been given for medical aid and security.

As a concluding note, Mr Nath noted the importance of keeping the indoctrinated inmates separately, acknowledging that this may not be possible with the present infrastructure. However, interviews with prisoners are still possible. He narrated an incident in Fancy Bazar where an offender was arrested, and he managed to escape into Central Jail, Guwahati because the jail staff had rented their quarters there for clothing shops. Finally, he noted that until the prison staff are upright, deradicalization would not be possible.



### **Interactive Session: Framing Solutions and Recommendations**

#### **On Best Practices in the Jails of Assam**

Mr. Dutta thanked Mr. Nath for the presentation. On the matter of jail staff and their residences, facilities etc. factors such as how the jail staff has to survive in their dilapidated quarters and living conditions have been highlighted. In spite of that, there are responsibilities on the jail staff to look at the increasing rate of radicalization. A special session on radicalization in all jails may thus be needed.

Mr. B. Saikia, Deputy Inspector General of Prison narrated his experience of dealing with extremists in Guwahati who were lodged in Central Jail, Guwahati. He narrated how they moved from an initial reluctance to be involved in any activities in the correctional homes to becoming integral parts of the correctional home. In Mr. Saikia's experience, intolerance is not a defining feature of Assam's jails and everyone cooperates in cultural events of all communities. He also stated that incarceration often leads to the dissolution of identities.

On a question raised by Ms. Rakhee S. Choudhury on the prime agents causing the process of radicalisation, Mr Hiren Nath replied that one of the first sources are the inmates themselves. Then, during court production, family members also aid this process. The DLSA representative from Barpeta asked about the radicalisation happening in society especially through social media using the anonymity afforded by social media, and wanted to know what the Assam Police was doing for it. Mr. Nath replied to the query that from June 2019 onwards, they have detected 400 social media posts, then they trace out a post irrespective of religious denominations and give it to the concerned SPs following which arrests take place. Therefore, 40 cases have been registered and an equal number of accused have been arrested. He added that they often counsel people to take away the posts or contact service providers.

Since service providers are in the US, they often have altercations with the police as their standards for determining sensitive posts are different. But this turns out to be a major problem





for society. He added that not only posts but even radicalization is mostly in the form of self-radicalization and often these people radicalize their families. He cites the example of the recent Sri Lanka bombings, from which, he argued that the process of radicalisation does not see the economic background; the bombers, in this case, were from elite sections of the society. Mr. Nath even added that post-Dokmoka lynchings, they had arrested several people within 48 hours for their social media posts.

A DLSA member from Bongaigaon raised a concern that when the police produce offenders before criminal courts for confession and they are mandated to give some time to the inmates for reflection. It is observed that after the reflection portion, 99% of the inmates would not confess. He also added that the Skill Development Mission in Assam has taken any step in Cachar too. The DLSA members have taken their own initiative and done things through their own funds. Mr. Dutta emphasised that coordination needs to happen between the concerned authorities. The Board of Visitors in the district must be made functional. Mr. Dutta also appreciated the point raised by the DLSA member from Bongaigaon, as according to him the point is valid and implementation of change needs to happen.

It was brought to everybody's notice that Kamrup, Dibrugarh, Hailakandi and Jorhat only had district level visitors. The representative from Central Jail, Jorhat also added that the people take police verification as being offensive. Ms. Geetali Rabha, Deputy Secretary, ASLSA suggested that District level Board of Visitors should also include the DLSA Secretary. Mr. Dutta responded to the same saying that the Board of Visitors in the Assam Jail Manual provision is not the same as the new Board of Visitors of *Re: Inhuman Conditions*. He suggested that the coordination and management of funds could be resolved with the help of the newly constituted Board as envisaged by the Supreme Court.

Mr. Dutta enquired if the absence of female doctors was being felt by the jail officers. The answer was a resounding yes. The I.G Prisons replied stating that all the Deputy Commissioners have been requested to provide the correctional homes with female doctors and 15 posts have



been sanctioned for the same. Mr. Dutta also talked of his observation of a patient in District Jail, Goalpara who was bed-ridden and was virtually visually impaired and enquired whether the inmate could be considered for release to which the answer was in the affirmative, adding that the same has been conveyed to the Government.

Mr. Dutta further asked if psychiatrists visited the correctional homes every day to which the answer was in the negative. Mr. Dutta also enquired upon the evaluation of treatment and health facilities that had been done. The Deputy Inspector General of Prisons responded stating that under the National Mental Health Mission, one team visits the jail every month. Mr. Dutta responds with figures that 7 people in Morigaon Jail have the same medicine prescribed to them in mentally ill inmates, which is a serious concern.

Mr. Dutta asks regarding its status in Dhemaji, or places that are located away from established medical institutions where it is difficult for a team of visitors to check. He raised suspicion as to whether the Mental Health Act, 2017 had been implemented in all jails. He urged all the jail staff to be cognisant of their responsibilities as caregivers under the Act. Mr. Dutta also suggested the appointment of Computer Assistants under the ICT scheme to run the computers in jail. Ms. Sharma, Inspector General of Prisons stated that after release, a sum of Rs. 10,000 is provided to an inmate in the States of Assam and Telangana. Mr. Dutta raised a query as to how the individuals shall be monitored post their release, reiterating the issue of societal acceptability. Inspector General of Prisons brought to everyone's notice that the office of Prison Welfare Officer in the State had been revoked, but they are willing to reintroduce the same.

At this point, Justice Shyam enquired if there is any policy exclusive to inmates in the country. Mr. Dutta talked about the experience of the members of Studio Nilima sent to Telangana to study the jails. He mentioned the importance of presence of facilities which could assist reintegration into society for inmates who had spent substantial time in the jails. He states that he shall take up the same with the Social Welfare Department. Mr. Nath announced that 1800 people were trained in 2018-19 under the Swabalambi (Scheme for Surrender cum Rehabilitation





of militants in North East) was introduced to take care of former militants, wherein the money is disbursed under Ministry of Panchayati Raj. A Memorandum of Understanding ("MoU") was signed with the State Bank of India under this scheme, where almost Rs. 1 lakh was given to each militant. With some modification, this can be introduced for prisons.

The Deputy Inspector of Prisons stated that crimes against property offenders often keep returning from jails. Hence, he suggested the same to be used from amongst them. A representative from DLSA Kokrajhar informed that the programme "*Karagoror pora Karigor*" was not being run by the Social Department in some districts in fact other authorities had been running it on their own initiative. I.G Prisons stated that the same started in Jorhat and the proposal had been laid down for the 6 Central Jails of Assam, further adding that the National Skill Development Mission has been operating in several jails. He also mentioned that the scheme "*Karagoror pora Karigor*" would be re-implemented with required changes and presented during the next Budget Session.

A representative from DLSA, Kokrajhar notified that the same is under the Skill Development Department and there is no cooperation received from their end. The Inspector General of Prisons declared that she would sit with the Director, Skill Development and sort out the issues of rehabilitation. She informed everyone that there are talented musicians in the recently opened music school in one of the correctional homes who have immense potential to rise. She mentions the District Jail in Majuli which has had only 15 inmates in the last 2 years. She also informed that there has been a decision to have a knowledge sharing relationship by which all jails will be tagged with local colleges.

Ms. Meenakshi Sarmah, Under Secretary, Assam State Legal Services Authority stated that while compiling the ASLSA report on correctional homes, she had found that there were no psychologists in the jails along with psychiatrists. She advocated engagement of clinical psychologists in this regard. Mr. Dutta remarked that it is a good recommendation. He added that psychotherapy is essential along with psychiatrists. Agreeing with the need for medications



prescribed by psychiatrists, he added that there is a need for specially appointed psychologists who could provide their counselling services to the inmates and yoga trainers to aid them. He had observed that specially appointed yoga instructors were not available in all the correctional homes across the State. Thus, he recommended that appointments for the same may be considered.

The representative from Central Jail, Tezpur recommended that for psychiatric/mental health problems, the interview system needed to be controlled so that unregulated people who are negative influences cannot meet the inmate, the problem would be sorted out. Mr. Dutta replied by stating that the discretion lies upon the jail authorities itself.

Ms. Meenakshi Sarmah also suggested that the latest opportunities for skill development should be emphasised. Ms. Geetali Rabha repeated her question on reflection. Mr. Dutta argued that the provision of reflection time exists for a reason. He also recognised that it is true that reflection should be done alone. However, the jail rules do not allow the individual to be kept alone.

#### **Vote of Thanks**

Ms. Nayama Ahmed, Assistant Jailor, Tezpur presented the vote of thanks. She provided a concise recapitulation of all essential points raised and thanked all panellists, participants and organisers of the event.





## RECOMMENDATIONS

### A. Regulatory and Administrative Issues

1. Constitution of Board of Visitors in consonance with Model Prison Manual 2016: The Government of Assam in the Home (B) Department vide Notification No. HMB.293/2014/266 dated 15.03.2019 constituted the Board of Visitors under Rule 20 read with Rule 25 of the Assam Jail Manual. However, this is not in compliance with the Order of the Hon'ble Supreme Court dated 15.09.2017 in *Re: Inhuman Conditions in 1382 Prisons*, W.P(C) No. 406/2013 to constitute Board of Visitors under the new Model Prison Manual 2016. It was resolved that a new Board of Visitors in terms of the new Model Prison Manual must be constituted so as to increase participation of civil society in correctional homes and also provide a mechanism for the staff of the correctional homes to agitate their grievances.
2. The Model Prison Manual 2016 has not been adopted by the State of Assam as has been directed by the Hon'ble Supreme Court in its order dated 15.09.2017. However, a Committee for revision of the Assam Jail Manual on the basis of the newly enacted Assam Prisons Act, 2013 and also adopting the provisions of the Model Prison Manual with such modifications as are relevant to the State of Assam, has been constituted by the Government of Assam. It was resolved that the Model Prison Manual must be adopted for the State of Assam expeditiously.
3. The State Legal Services Authority must take steps to conduct a detailed social audit of each correctional home in particular and the whole correctional system in general in terms of the Order dated 15.09.2017 of the Hon'ble Supreme Court in *Re: Inhuman Conditions in 1382 Prisons*, W.P(C) No.406/2013. The audit should look into infrastructure, finance, health, hygiene and sanitation among others.
4. It was resolved that the collection and storage of data on each prisoner must be increased, including the status of their court appeals, keeping in mind that a majority of them are under trial prisoners. The Prisons Information System developed by the National Informatics



Commission which is in use in certain jails like Tihar where even misbehaviour of the inmate can be recorded, should be expanded to cover all jails of Assam.

5. It was recommended by the Executive Chairman of the Assam State Legal Services Authority that proper use of the National Judicial Data Grid and its various features so that access to information is improved at all levels. Awareness and training regarding the use of the National Judicial Data Grid needs to be disseminated to all the stakeholders in the correctional homes.
6. Comprehensive capacity building of correctional staff must be organised to combat radicalisation in correctional homes. Process of de-radicalisation in correctional homes needs to be spearheaded by active cooperation between prison staff, Government departments and Non-Governmental organisations.
7. Collaborative efforts and meetings with the Department of Social Welfare must be arranged so that the introduction of social welfare schemes for women and children in jails can be facilitated. If such schemes exist, they shall be implemented within jails as well. This has to be done in conjunction with the Legal Services Authority, jail authorities and Department of Social Welfare

#### **B. Healthcare Issues**

1. Measures for improvement of mental health care: It was noted that specialist medical care for mental health must be made accessible to all the inmates and staff. Provision for counsellors and clinical psychologists in all correctional homes of the State must be ensured in collaboration with educational institutions in Universities which have Departments of Psychology and Social Work. The Mental Health Act, 2017 must be implemented in the correctional homes in its entirety and correctional officers must be trained in this regard.
2. It was noted that there were a number of complaints and observations, including by the Executive Chairman of the Assam State Legal Services Authority, regarding the shortage and availability of specialist doctors, medical officers and medical staff, it was resolved that





adequate measures in all correctional homes and ambulance facilities should be provided in all correctional homes.

3. It was resolved that specially appointed yoga instructors must be appointed in all the correctional homes of the State.

### C. Reformation and Rehabilitation

1. It was resolved that a specific policy for reformation, rehabilitation and reintegration of inmates into society by ensuring opportunities for employment, loans from banks, proper marketing of products from jail industries etc. This must be designed by analysing best practices from different States and different countries which are suited to the correctional homes of Assam.
2. It was resolved that the scheme titled "*Karagoror pora Karigor*" must be revived and introduced in all the correctional homes of the State by the Assam Prison Headquarters in collaboration with the Assam State Skill Development Authority.

*Signature*



## CAPACITY BUILDING WORKSHOP FOR OFFICERS OF CORRECTIONAL HOMES IN ASSAM

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**CAPACITY BUILDING WORKSHOP FOR OFFICERS OF CORRECTIONAL HOMES  
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