



COLLABORATIVE NETWORK FOR  
RESEARCH AND CAPACITY BUILDING

# STUDIO NILIMA

NEWSLETTER

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## Activities by the Studio

### 1ST LATE JATINDRA MOHAN CHAUDHURI LAW LECTURE SERIES



September 28, 2019  
Gauhati Town Club Auditorium

Angshuman Bora, Senior Advocate, Gauhati High Court engaging participants in an interactive panel discussion while Justice (Retd.) I.A. Ansari (right) is seated on the dais.

The Late Jatindra Mohan Chaudhuri Law Lecture Series was instituted by Studio Nilima: Collaborative Network for Research and Capacity Building in fond memory of our dear mentor and one of the finest jurists of Assam. The law lecture series, initiated as a tribute to *Jatin da*, seeks to bring together lawyers, academics, jurists, judicial officers and law students to engage and deliberate over various aspects of criminal law and procedure.

Justice (Retd.) I.A. Ansari, Chairman of the Punjab Human Rights Commission was invited to deliver the first lecture series, held at the Gauhati Town Club Auditorium in Guwahati, Assam on September 28, 2019. The theme for the gathering was “*reading, understanding and appreciation of evidence and trial court procedure*”. The lecture series was attended with much enthusiasm by the members of the Assam law

**LATE JATINDRA MOHAN CHAUDHURI** was born in March, 1940. An eminent criminal lawyer, he was a legal power house in every sense with razor sharp understanding of criminal law and handled some of the most sensational criminal cases of his time. His presentation of cases in the Court room was flawless, he knew how to take the court with him. He was famous for his mastery over the art of cross-examination and it is said that other advocates would stop their daily business and rush to watch him cross examine the witnesses. His submissions were always crisp, precise and he knew the facts of the cases at the back of his hand.

He was humble in his submissions before the Hon'ble Courts and never misled the court. Though Mr. Chaudhuri was a successful advocate and was a force to reckon within the legal

field, what endeared him to everyone/anyone who had the great fortune to interact with him was his humility and down to earth demeanor. It is due to his affable manners, that Mr. Jatindra Mohan Chaudhuri was respected, loved and admired by people from all strata of society. Apart from being a successful advocate, he was a very good tennis player and as a member of the prestigious India Club he contributed immensely to uphold the interest of the Club.

The present Law Lecture Series is a humble tribute to a great teacher and guide by the members of the Studio Nilima family.



fraternity and saw the participation of prosecutors, defence lawyers alike and students from various law schools of Assam including NERIM, NEF Law College, Tezpur Law College, Gauhati University Law College, Royal Global University and BRM Government Law College.

In his address, Justice Ansari recounted the various modes of taking cognizance prescribed under the Code of Criminal Procedure, 1973. He specifically brought attention to Section 197 of the Criminal Procedure Code, 1973 and said that if a Complaint is brought in without following the prerequisites of this section, the Court cannot take cognizance. Further, he emphasised that the Magistrate cannot record a statement unless he has taken cognizance. The issue of “cognizance”, which remains a contentious topic for many jurists and lawyers, was foregrounded by Justice Ansari in his address and he stated that according to him and as per the provisions of Criminal Procedure Code, cognizance “is taken at multiple stages during the course of the trial”. Justice Ansari also touched upon the rights of accused in his address and specifically highlighted the provision of Section 313 which provides for an opportunity to the accused to place their narrative.

*The theme for the gathering was “reading, understanding and appreciation of evidence and trial court procedure”.*

In attending to the topic of “appreciation of evidence”, Justice Ansari brought out the complexities and tensions inherent in treating eye witness accounts and medical evidence. In sketching the evolution of the medical evidence, he pointed out that as the law stands today, the medical evidence cannot



Participants at the first Late Jatindra Mohan Chaudhuri Law Lecture.

always be treated as “touchstone for testing veracity of ocular evidence”/ eye witness evidence. As such, “the Court has to determine who is telling the truth”, he emphasised. In a conflict between medical and “ocular” evidence, the responsibility lies with the Court to ascertain the truth of both sets of evidence. The position, he stated is that the evidence of an eye witness has to be relied upon and if it proves the guilt of the accused, the same has to be held guilty even if it is not reconciled by the medical evidence on record.

Justice Ansari also mentioned that while relying on precedents/judgments of different Courts, lawyers must be acquainted with the background facts of those specific cases. He emphasized that the binding decisions of Courts have to be referred to and cited in the context of the facts where they were applied and not as statutory authority.

The lecture was followed by an interactive panel discussion with Justice (Retd.) I.A. Ansari; Mr. Ziaul Kamar, Senior Advocate, Gauhati High Court, and Mr. Angshuman Bora, Senior Advocate, Gauhati High Court.

## 2 ND LATE JATINDRA MOHAN CHAUDHURI LAW LECTURE SERIES



October 26, 2019  
Gauhati Town Club Auditorium

Mr. Sidharth Luthra, Senior Advocate, Supreme Court of India; Visiting Professor, Northumbria University and Formerly Additional Solicitor General of India was invited as the speaker for the second Late Jatindra Mohan Chaudhuri Law Lecture held on October 26, 2019 at the Gauhati Town Club Auditorium in Guwahati, Assam. The lecture had a thematic focus on the law of evidence and engaged the gathering in a discussion around the “law of hearsay evidence”, the “doctrine of last seen together theory” and the “law on circumstantial evidence”.

The gathering comprised of members of the Assam law fraternity including public prosecutors and defence lawyers from the various forums including the District and High courts. The audience also had members of the judiciary including officers from the Assam State Legal Services Authority including

Mr. S.N Sarma, Member Secretary; Ms. Gitali Rabha, Deputy Secretary and Ms. Meenakshi Sarmah, Under Secretary. There was wide representation from students of various law colleges of Assam and beyond including NERIM, NEF Law College, Tezpur Law College, Gauhati University Law College, Royal Global University, BRM Government Law College, National Law University and Judicial Academy of Assam and Lloyd Law College, Noida. The gathering had members of the Governing Council from Studio Nilima which included Mr. Justice (Retd.) Brojendra Prasad Katakey, Former Judge, Gauhati High Court and Mr. Apurba Kumar Sharma, Chairman (Executive Council) Bar Council of India.

While speaking on the topic of hearsay evidence, Mr. Luthra indicated that “truth” in hearsay evidence is often limited. “The human mind’s capacity to adapt to the circumstances around it ensures this”, he said.



Top Left: Sidharth Luthra delivering lecture.  
Top Right & Bottom Left: Participants during the lecture.  
Bottom Right: Sidharth Luthra with team members of Studio Nilima.

Drawing on an illustration, he pointed out that in the event of an accident where events get blurred; there is a tendency to take a longer time to narrate the series of circumstances that transpired, due to the role “emotions play in embellishing a story”. A good cross-examiner, he explained, takes away the excess from the actual content.

In explaining the theory of “last seen together”, he emphasised that the fact of “last seen” is never enough to be the sole basis for a conviction. The doctrine requires a shift in the onus of proof in a case, wherein the burden of proof of whether the deceased went their own way, or met someone else, etc. – all of these is upon the accused to prove. He stated few examples of circumstantial evidence,

last seen together, matching teeth marks, dental imprints, all make for circumstantial evidence. One may take facts and make inferences, but these facts must create a whole chain of events. It must be clear that there is only one conclusion possible.

*Mr. Luthra indicated that “truth” in hearsay evidence is often limited.*

In the interactive session that followed, there were engaging discussions on various facets of criminal law. Mr. Luthra also drew on his long experience with the Supreme Court Legal Services Committee to offer his inputs into the systemic lapses that often plague the legal services delivery mechanisms in the country. Apart from Mr. Luthra, who was the keynote speaker, the thematic focus groups also invited participation from Mr. Nilay Dutta, Senior Advocate, Gauhati High Court and President, Studio Nilima; Mr. Ziaul Kamar, Senior Advocate, Gauhati High Court; Mr. Angshuman Bora, Senior Advocate, Gauhati High Court and Mr. Dilip Kothari, Advocate.

## VISIT TO DISTRICT JAIL, GOALPARA



Team members of Studio Nilima with Ranjita Agarwalla, Chief Judicial Magistrate, Goalpara; Chitra Rani Saikia, Secretary, D.L.S.A., Goalpara; Legal Aid Counsels; staff members of D.L.S.A., Goalpara; Anowar Hussain, Dy. S.P. (B), Goalpara and staff of District Jail, Goalpara.

The team from Studio Nilima: Collaborative Network for Research and Capacity Building (hereinafter referred to as Studio Nilima) visited the District Jail, Goalpara on November 3, 2019. The purpose of the visit was to interact with the members of the Jail administration, the inmates as well as the members of the District Legal Services Authority, who are mandated to provide legal care and assistance to the inmates. The visit was also important to assess the extent to which the reform

*Nilay Dutta, President, Studio Nilima with Tridib Kumar Bhattacharjee, District & Sessions Judge, Goalpara; Ranjita Agarwalla, Chief Judicial Magistrate, Goalpara and Chitra Rani Saikia, Secretary, D.L.S.A., Goalpara.*



measures prescribed by Hon'ble Supreme Court of India in *Re-Inhuman Conditions in 1382 Prisons*, as reported in W.P.(C) 406/2013 were being implemented by the Jail Administration and understand the challenges, if any. The visiting team comprised of members of Studio Nilima led by Mr. Nilay Dutta, President, Studio Nilima. The team was also joined by Mr. R.C. Borpatragohain, Advocate General, Assam; Mr. Sandip Samaria, Advocate, Gauhati High Court and Mr. Nandan Sarkar, Advocate, Gauhati High Court.

Upon arriving at Goalpara, the team had a meeting with Tridib Kumar Bhattacharjee, District and Sessions Judge, Goalpara; Ms. Ranjita Agarwalla Chief Judicial Magistrate, Goalpara; Ms. Chitra Rani Saikia, Secretary, District

Legal Services Authority, Goalpara; the Jail Visiting Legal Aid Counsel panel members, Goalpara and Shri Anowar Hussain, Dy. S.P. (B), Goalpara. In this meeting, discussions were primarily held on the experiences of the D.L.S.A. members and the Jail visiting LACs vis-à-vis their interaction with Jail authorities and the inmates and the issues which prevail in the Jail. Primarily, concerns were cited around the Declared Foreign Nationals (“DFNs”) who are staying in the Jail with no additional funds provided to them and the basic needs of the inmates in the Jail including safe drinking water, health and education.

*Due to the presence of a high volume of declared foreign nationals (“DFNs”) with no adequate funds from the Government of Assam, the maintenance of the living conditions of the inmates and the DFN’s is a cause of constant conflict.*

The interaction with the jail administration also highlighted concerns around the health and education of the inmates. However, the climate of



the Goalpara district jail was fraught with much tension as noticed by the team. Due to the presence of a high volume of declared foreign nationals with no adequate funds from the Government of Assam, the maintenance of the living conditions of the inmates and the DFN’s is a cause of constant conflict. Often frustration leads to non-cooperation amongst the members of the DFNs, which tend to escalate immediately owing to misunderstanding caused by cultural and language barriers. Such daily struggles of the Goalpara jail administration were experienced by the team during their visit. The concerns and grievances of the DFNs overwhelm the grievances of the other inmates and negotiating these constant struggles continue to challenge the jail authorities every day.

## VISIT TO DISTRICT JAIL, MORIGAON

*Nilay Dutta, President, Studio Nilima with Pranjal Das, District & Sessions Judge, Morigaon; Dr. R. C. Borpatragohain, Advocate General of Assam; Legal Aid Counsel, Morigaon and staff of D.L.S.A., Morigaon.*



On September 15, 2019 a team of Studio Nilima under the leadership of Mr. Nilay Dutta, Senior Advocate, Gauhati High Court and President, Studio Nilima visited the District Jail of Morigaon. The team was accompanied by Mr. R.C Borpatragohain, Advocate General, Assam and Mr. Surajit Bharali,



Session with Legal Aid Counsels, Morigaon.

in 1382 Prisons W.P(C) 406 /2013 and understand the challenges for its non-implementation, if any. The visit also provided an opportunity to dialogue and interact with the members of the jail administration, the inmates as well as the Legal Aid Counsels and the District Legal Services Authority (“D.L.S.A.”) on their

Advocate, Gauhati High Court. The purpose of the visit was to firstly, assess the reforms prescribed by the Hon’ble Supreme Court in *Re-Inhuman Conditions*

concerns and grievances pertaining to the jail conditions.

## Pratidhwani

During this meeting the team interacted with Mr. Pranjal Das, District and Sessions Judge, Morigaon (“DSJ”) and Mr. Anurag Jintoo Borah, Secretary,



Team members of Studio Nilima with Nilay Dutta, President, Studio Nilima; Pranjal Das, District & Sessions Judge, Morigaon; Anurag Jintoo Borah, Secretary, D.L.S.A. Morigaon; Dr. R. C. Borpatragohain, Advocate General of Assam; Legal Aid Counsel, Morigaon and Staff, D.L.S.A., Morigaon.

### *The purpose of the visit was to assess the reforms prescribed by the Hon'ble Supreme Court in Re-Inhuman Conditions in 1382 Prisons.*

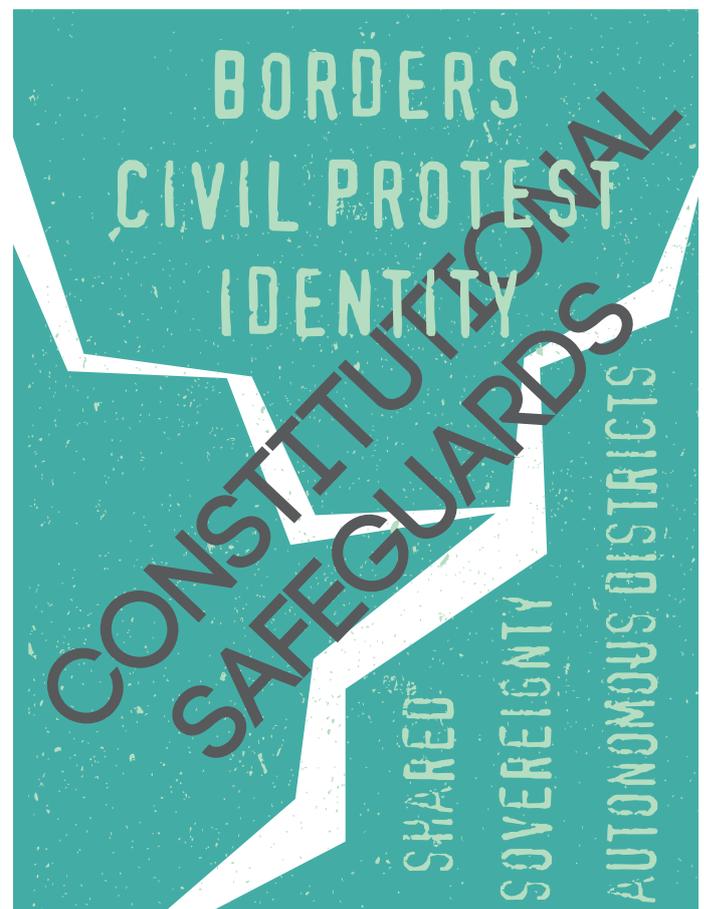
District Legal Services Authority ("Secretary, D.L.S.A."), Morigaon along with legal aid counsels of the district. The interaction between the team, the

jail authorities and inmates was facilitated by the D.L.S.A. members. Mr. Gautam Borah, Jailor and Mr. Tapash Kr. Bhuyan, Assistant Jailor were welcoming of the team. The team focused on assessing the living and working conditions of the jail administration and the inmates. The report of the Jail visit will be made available on our website shortly.

## Achievement

### STUDIO NILIMA TO ASSIST A HIGH LEVEL COMMITTEE

Studio Nilima: Collaborative Network for Research and Capacity Building has been enlisted as a Resource Institution to assist the High Level Committee on Clause 6 of Assam Accord instituted by the Government of India. Studio Nilima will be providing research inputs and assistance to the High Level Committee over the coming months drawing from its Constitutional Safeguards Project which has been working on understanding the contours of the demand for constitutional safeguards in Assam. The project has interviewed a cross section of stakeholders from various communities and interest groups in the states. It has also consulted and interviewed several public intellectuals and domain experts during the course of its work.



## FEEDBACK

We hope this issue of the newsletter was a good read. We invite your valuable feedback to help us improve our newsletter and our work at Studio Nilima.

Please write to us at [abantee@studionilima.com](mailto:abantee@studionilima.com).