

## CHAPTERS-VI

### **APPLICATION OF HUMAN RIGHTS BY THE SUBORDINATE COURTS AND PROBLEMS IN IMPLEMENTATION**

In the previous two chapters namely Chapters No. IV\* and V\*\* several human rights as are enshrined in the international human rights instruments as well as in the constitution of India and other statutory laws which are directly or indirectly relate to the justice delivery system concerning the subordinate judiciary have been discussed and noted chronologically.

In chapter V the domestic laws that is the laws enforceable in India which are concerned about the human rights in our country and relates to the functioning of subordinate judiciary have been pointed out. The constitutional provisions mentioned in sub-chapter V.I are binding on all including the subordinate courts in the country. There is no exception to it. In view of Article 141 of the Constitution of India the decision or ruling of the Hon'ble Supreme Court of India which are mentioned in sub-chapter V.II becomes binding to all living within the territory of India. The statutory laws which have been discussed thereafter in sub chapters- V-III to V.V are passed by parliament of India. These are binding on all courts subject to state amendment. Therefore, the question of non-application of the provisions as mentioned in those chapters by the subordinate courts does not arise.

But, mere guarantee of certain rights in the constitution or statutory laws does not *ipso facto* mean that these rights are protected or can be protected

automatically. To protect the rights by the courts of law, the environment, infrastructure and surroundings which are attached therewith must also be supportive to the system in open heart. The staffs working in the establishment, the advocates and their clerks, district administration including police system, doctors, experts, common people concerned with the court and above all the society as a whole must assist the system to the extent required and possible so that a good and transparent system is seen to have prevailed. The judicial officers who preside over the proceeding or controls the establishment alone cannot and will not be in a position to protect the rights of others unless and until they are supported by the systems and stake holders.

On critical analysis during field verification and collection of data, it is seen that the subordinate judiciary in the state of Assam is being subjected to various problems for which the human rights of the target groups cannot be protected as expected. The problems are shortly mentioned herein below:

#### I. LESS NUMBER OF JUDGES COMPARING TO THE RISE OF CASES

With the increase of population, rise in ultra-modernization, development of science and technologies, criminalization of politics, erosion of morality and ethics in the society the numbers of cases are raising everyday. And at this moment the chance of stopping increase of cases is too little. However, the numbers of judges are not increasing at par the increase of cases. In our country including the state of Assam, the numbers of Judges or judicial officers is less in comparison to other

countries. In America the numbers of judges is 107 per million, 75 in Canada and 51 in United Kingdom. While in India, the number is 12/13 only.

The numbers of cases pending in some courts are beyond imagination. As for instance, as on 31-12-2012 there were 39,666 criminal cases pending in the magisterial courts at Kamrup District.<sup>1</sup> There being 9 courts in total, averagely, there were about 4,407 cases pending per court. That being the position, as many as 70-80 cases are fixed in the courts per day out of which about 10-12 cases are fixed for recording evidence. Averagely 12 numbers of witnesses turn up everyday. Apart from the regular orders, the court is to take up bail matters, production matters of accused persons, acceptance of bail bonds etc.. Therefore, generally the next date of hearing of a particular case is fixed after a period of 2/3 months. Similar is the situation at Nogaon, Barpeta, Karimganj and Cachar district.<sup>2</sup> In the meantime, it may take several adjournments from the prosecution or from the defence. As a result of which, disposal of the cases are delayed. Due to lack of adequate numbers of judicial officers, a large number of cases are becoming old pending day by day. This factor is delaying the cases from disposal in due time. And definitely the inadvertent delay by the courts lead to violation of human rights pertaining to speedy trial of litigation.

## 2. DEFICIENCY OF INFRASTRUCTURE

It is an admitted fact that to deliver quality justice promptly the infrastructure must be good enough. In the absence of good infrastructure, prompt

justice cannot be expected. Although the scenario is developing, still the infrastructure is required to be developed to a great extent. There are many courts where the witness shed is not available.<sup>3</sup> As a result of which, large numbers of witnesses who come to the court to assist the justice delivery system are subjected to humiliation. Alternative lighting arrangement is not available in many courts. There are some courts which are still functioning in rented rooms with unhygienic condition.<sup>4</sup> In the absence of the required infrastructure, it becomes difficult for the officers and staffs to work properly. There are some courts, where the space in the chamber is not sufficient. There are some courts where there is no attached urinary system. Resultantly, the judicial officers are to share a common urinal which is by no means compatible for a judicial officer.<sup>5</sup> The judiciary and the government should be committed to provide the best infrastructural facilities for the justice delivery system. The lack of such facilities leads to a delay in rendering justice and resultant violation of human rights of the stakeholders.

### **3. INADEQUATE SENSITIZATION PROGRAMME AMONG JUDICIAL OFFICERS**

Having knowledge on a subject and use of the same practically are two different aspects. Admittedly, all the judicial officers are supposed to know the law by which they are to proceed with the day to day trial of a case. But, none of them claim to have acquired perfect or complete knowledge in all the branches of law. Similarly, having specialization on a subject or branch of law is again a different aspect. Human rights although an old concept, yet, have turned into an emerging

point since the recent past. It is emerging day by day with the pace of development and globalization. An effective training or sensitization programme serves the futuristic needs of the system by improving the potential to optimum level. Although the Hon'ble Gauhati High Court vide Notification No. HC.VII. 333/ 2012/ 10390/A dated 3<sup>rd</sup> December, 2012 issued by the Registrar General all the District & Sessions Judges were directed to hold monthly meeting with the judicial officers on the subjects like rights of the accused which are enshrined in the constitution of India and other statutes, the rights of the victim, compensation in criminal trial, juvenile justice, sentencing in a criminal proceeding, legal aid, right of differently abled persons including senior citizens, alternate dispute resolution, lok adalat etc. but, that notification also did not specifically directs about any sensitization programme on human rights. Therefore, if the judicial officers are sensitized on this subject and points of human rights definitely, they would be able to understand the new dimensions of the human rights and would be able to protect those rights to a larger extent.

The Hon'ble Supreme Court of India in the landmark case of *Mohammad Ajmal Mohammad Amir Kasab @ Abu Mujahid v. State of Maharashtra*<sup>6</sup> in unequivocal terms hold that right to free legal aid is the inherent right of an accused. The Hon'ble apex court hold *'the magistrate or the Sessions Judge before whom the accused persons appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state. We would therefore, direct the magistrate and sessions judge in the country to inform*

*every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the state.”*

Hon’ble Justice P. Sathasivam<sup>7</sup> in his inaugural speech on 17-08-2013 in the new court building of the Gauhati High Court stated *‘need for sensitization is as imperative as an active judiciary. It may not be enough if a judge is only energetic and diligent in the performance of his duties. Sometimes he has to go beyond being an active judge and has to be an activist judge. where it is warranted, he has to go behind the letter of the rule, identify the principle and policy of law on which the rule is based and act in furtherance of the same. Activism is not something which is the exclusive domain of the High Court or Supreme Court only. It befits the judiciary at all levels to be informed by the principles and values enshrined in our constitution in the day to functioning.’*<sup>8</sup>

It is a shocking state of affairs that this provision is not applied by the courts of law in discharging their duties in its true perspective. It is the need of hour that such sensitization programme are held among the judicial officers, advocates, staffs and other persons associated with the courts function so that human rights would be protected better.

#### **4. LACK OF TRANSPARENT SELECTION PROCESS AND TRAINING FOR THE PROSECUTORS**

Especially in cases by or against the Government, it is experienced that the state represented by the Public Prosecutors, Assistant Public Prosecutors or

Government Pleaders, as the case may be, the Government fails to stand. This occurs primarily due to the bad selection process of such representatives. They are selected without following any process of formal recruitment.<sup>9</sup> Further, those who are entrusted with the holy job are not given exhaustive training in the respective fields about the role they are to play with the change of legal scenario including human rights. Of late, the Hon'ble Gauhati High Court arranged for a training programme for such prosecutors of few districts.<sup>9.a</sup> To protect the human rights more and more, such training are required to be provided to them frequently.

As stated above, human rights is an emerging concept. It includes not only the rights of the accused but also the rights of victims and witnesses too. The role of a government advocate or public prosecutor is not to proceed with the case for the sake of showing his attendance. He must also be equipped with the latest position of the legal provisions. If the public prosecutor is acquainted with the provisions of Section 357 and 357-A of the Code of Criminal Procedure, then definitely he would be able to inform the provision to the victim and in appropriate cases, the victims would get the compensation which is nothing but protection of the basic human right. If the persons who are entrusted to represent the state in exterior and the people in interior are given training on the concept, then naturally, the situation that is prevailing could be come over.

## **5. LACK OF TRAINING TO MINISTERIAL STAFFS AND ADVOCATES**

Like the judicial officers, the staffs working in the courts are also part and parcel of the justice delivery system. The staffs and advocates can be treated as parts of the body of the court. If one part becomes handicapped, then definitely, the whole body would suffer. If the staffs do not work properly, then it would be practically impossible for the judicial officers to impart quality and expected justice. Hon'ble Justice P. Sathasivam (supra) in his inaugural deliberation on 17-08-2013 at Gauhati stated *'twenty first century call for changing our approach as otherwise we are on the verge of losing the esteem, which we are indeed lucky to enjoy in the society. The social scenario has been fast changing. Unless the bar is able to keep pace with the needs and the expectations of the society, we will be miserably failing in our fundamental duties.'*<sup>10</sup>

The Hon'ble Gauhati High Court arranged for training of the staffs working in the district judiciary on the field of accountancy, management, computer skills, and other matters of daily works.<sup>11</sup> But, specifically no training has been arranged for sensitizing them on the concept of human rights. There is no record that the advocates are trained by any bar on the protection of human rights while representing a party in the court including the right of the opposite sides. As the staffs and lawyers are not trained or sensitized on the basic human rights of the people coming to the court, they do not feel that for their inactive role, the basic human rights of the litigants are being violated.



## **6. LACK OF AWARENESS AMONG THE MASS**

In spite of organizing legal awareness camps at several places on different aspects of laws under the banner of the National Legal Services Authority or the State Legal Services Authority or the District Legal Services Authorities, people are not aware about the basic laws of the land including the benefits of free legal aid which is one of the most important human rights. As per the guidance of the National Legal Services Authority, as many as 599 numbers of Para Legal Volunteers have been selected and as many as 69 Legal Aid Clinics have been constituted in the twenty one districts of the state.<sup>11.a</sup> But, the numbers of persons seeking free legal aid is not upto the mark as expected. As a result of which, many persons have remained as victims till date. The task of creating awareness among the mass is vested to the Civil Judge of the concerned district being ex-officio secretary of the district authority. The court of civil Judge is a regular court for trial of the civil cases with unlimited pecuniary jurisdiction and the regular trial of offences. It becomes almost difficult on the part of such officer to discharge the extra duties of creating awareness in the rural areas. The regular courts being overburdened are not in a position to create awareness in the court about the benefits to the beneficiaries of free legal aid.

## **7. CORRUPTION**

It is believed that judges are free from any sort of corruption. They are stated to be the representative of God. Although in reality, judiciary consists of the judicial

officers and the staffs working therein, for a common man judiciary consists not only with the judicial officers but by other persons too. According to the common man all the persons associated with the system directly or indirectly are part of the court. This concept includes the staffs of the courts, advocates, advocate's clerk and even unidentified touts. If any one of the aforesaid category indulges any corrupt activities, then it is the system as a whole which is blamed. Many organizations conducted research in this field. The report, based on a countrywide survey of *“public perceptions and experiences of corruption in the lower judiciary,”* conducted by the ‘Centre for Media Studies’, finds that a very high 77 percent of respondents believe the Indian judiciary is corrupt. It says that “bribes seem to be solicited as the price of getting things done”. The estimated amount paid in bribes in a 12-month period it found was around 580 million dollars. “Money was paid to the officials in the following proportions: 61 percent to lawyers; 29 percent to court officials; 5 percent to middlemen.”<sup>12</sup>

The tenet of the constitution is to provide justice to the people free of cost or with a cheaper rate. That is why the court fees are also very nominal. In our country laws have been passed by the parliament and state legislature for providing free legal aid to those who are unable to bear the cost of professional advocates. But, in spite of the available facilities for easy access to justice to all, there are enemies of the system who indulges in corrupt activities. Although they are not discharging any judicious activities, yet, payment of anything in the name of the system would tarnish the reputation of the holy mission and wise system. Paying

anything either in cash or kind to get justice either to a staff of the court or to a middleman definitely violates the human rights of the litigants.

## **8. UNDEFINED POWER OF HUMAN RIGHTS COURTS**

In view of Section 30 of the Protection of Human Rights Act, 1993, from August, 1996 the Governor of Assam in consultation with the Hon'ble Gauhati High Court designated all the District and Sessions Judges of all the judicial districts as the Human Rights Courts.<sup>13</sup> However, none of the courts are functioning till date in as much as the section or the Act is silent about the powers and functions of such courts. Section 30 of the Act provides that for the purpose of providing *speedy trial of offences* arising out of Violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district Court of Session to be a Human Rights Court to try the said offences. Thus, the section empowers the Human Rights Court to try the offences arising out of violation of human rights. The term '*offences arising out of violation of human rights*' is a vague one. It does not empower the court to take cognizance of the matters pertaining to violation of human rights as are exercised by the National Human Rights Commission and the State Human Rights Commissions.

Besides, the Human Rights Courts have been lying dormant since 1995 due to the non-appointment of Special Public Prosecutors. Section 30 of the Protection of Human Rights Act of 1993 does not lay down the jurisdiction and procedures to be followed by such court. The National Human Rights Commission in its 1998-99 reports has drawn attention to the ambiguity regarding the precise nature of

offences that could be tried by these courts. It has recognized that substantive amendments to Section 30 of the Act are necessary to enable the courts to execute a speedy trial of the offences arising out of the violations of human rights. These courts cannot serve any fruitful purpose until a comprehensive legislation is passed to that effect.

The matters which are entertained by the State Human Rights Commission mostly pertains to the incidents occurred in the district level. Definitely, the district comprises villages. There are some villages which are not communicable till date. The villagers who could afford by any means approach the Human Rights Commission in the state headquarter. This requires huge expenditure and troubles. But, due to non-defining of the powers and functions of the Human Rights Courts the victims are suffering a lot including mental agony.

## **9. CONCEPT OF VICTIMOLOGY IS NOT WELL DEFINED**

As stated above, the practice of the concept of victimology is not satisfactory in our state. The victim has no role to play except filing the complaint with the police stations and adducing evidence when called for. As a result of which many important grievances of the victims' side remain un-redressed. The victim remains unaware about the fate of his or her case. In complaint cases, the victim remains aware about the proceeding of the case and can adduce evidence as may be required by him. But, in cases which are initiated through police stations, the victim has nothing to do till he or she is called by the court to adduce evidence. Till

then the victim remains in dark about the progress of the case. The only role of a victim is to adduce evidence as and when called upon to do so. Even, a victim cannot file a petition directly to the court ventilating the grievances including calling for the important witnesses which have been left out by the Investigating Officer for one reason or the other.

When in a criminal case instituted through the police stations an accused gets acquittal, the victim is not informed about the result of the case. As a result of which the sorrow of the victim remains as it was without expected remedies. Even if the victim receives any information about the acquittal or inadequacy of the sentence, he or she has nothing to do in as much as the appeal against acquittal or inadequacy can be preferred only by the State Government or the District Magistrate.<sup>13.a</sup> The victim cannot move the court directly. It is a lengthy process to approach and manage the State Government or the District Magistrate to prefer an appeal in the above eventualities. Unless in appropriate cases victims are allowed to participate the proceeding including filing of appeal against inadequate sentence or acquittal, it cannot be claimed that justice is done properly to the aspirants.

## **10. NON-ACTIVE ROLE OF THE GOVERNMENT IN MATTERS OF VICTIMOLOGY**

The Hon'ble Gauhati High Court in the case of *Md. Jalilur Rahman @ Sonti Ali*<sup>14</sup> directed the state Governments, amongst others, to the effect that i. The State Governments, within the jurisdiction of this Court shall take steps to prepare the scheme, as required by the statutory provision, prescribed by Section 357-A of the

Code of Criminal Procedure without further delay. ii For the purpose of providing financial assistance towards rehabilitation of the victim or his/her dependents, in appropriate case, and for proper implementation of the scheme, provided by Section 357-A of the said Code, the Judicial Officers, working under the jurisdiction of this Court, during the course of trial, shall ascertain, (a) if there is any dependents of the victim (b) the financial status of the victim or his dependent(s), if any, (c) whether the victim or his/ her dependents, as the case may be, needs any rehabilitation (d) the financial status of the accused person(s) and (e) such findings shall be reflected in the judgment.

Subsequently, the state of Assam has notified Assam Victim Compensation Scheme, 2012 {{reported in the order dated 24-04-13 in PIL (*Suo moto No. 26 o 2013*)}} and a sum of Rs. 72 lakhs has been sanctioned and disbursed to the Secretary State Legal Services Authority for releasing the amount to 21 District Legal Services Authorities.

But, due to non-circulation of the same in public particularly to the litigants who are coming to the courts, people are not aware about the valuable and first ever granted rights. Due to ignorance people are not in a position to pursue the court for getting the benefit. The apathy of the government becomes a hurdle towards protecting the rights of the people.

## **11. LACK OF WITNESS PROTECTION PROGRAMME**

Witnesses are the eyes and ears of a criminal trial. They are the corner stones of a successful criminal justice system. Protecting them from criminal intimidation or threats or coercion against their lives because of co-operation with law enforcement agencies is critical to the maintenance of the rule of law. The witnesses lead the court knows about the facts before hand. If they become hostile or do not turn up because of threatening or intimidation or inducement through various means, the criminal justice system will fail. The graph of acquittal in criminal cases is on rise and one of the reasons behind this is absence of Witness Protection Programme. In spite of the 198<sup>th</sup> Law Commissions Report<sup>14.a</sup> to protect the witnesses from becoming vulnerable from the attack of the accused persons, till date no such measures have been taken by the Government.

Further, witnesses are not paid the diet money.<sup>15</sup> Witnesses who have nothing personal with the parties use to come to the court by bearing the expenditure from their pockets. There are people who use to come to the court from rural areas having a poor financial background. Even after spending money from the pockets the witnesses are not getting the expected, far off from good behavior from the court. Sometimes, due to busy schedule of the court works witnesses are to wait from morning to the evening and therefore, cannot move till their turn come up. The witnesses being human entities are required to eat and drink but due to non-payment of the diet money and other basic amenities they remain in

starvation all the day long. As a result of which, the witnesses who really know the facts of a case are not coming to the court regularly. Ultimately the culprits are getting easy acquittal which results violation of human rights of the victims.

## **12. FAULTY INVESTIGATIONS INCLUDING VAGUE MEDICAL REPORTS**

Faulty investigation by the police and other investigating agencies lead to violation of human rights. Even on genuine accusations, the police authorities conduct perfunctory investigation without following the procedure established by law. As for instance, the investigating agencies do not record the statements of those witnesses who are acquainted with the facts and circumstances of the case. They do not seize the articles as per the requirement of law and for which the statements so recorded and the articles so seized do not become admissible in law during trial. There are instances where without recording the statements of the witnesses on the spot the investigating officer of the case merely collects the names of the witnesses without any interrogation and thereafter use to record the statements as per his wish by sitting in the office. In the result, when the witnesses face cross-examination during trial, then their versions become contradictory with the statements recorded under section 161 of the Code of Criminal Procedure. In end, the contradictory statements lead to acquittal of the culprits who did not dare to violate the human rights of fellow citizens.

Further, the medico-legal reports which bear great significance in a criminal trial are also found defective.<sup>16</sup> The same is not provided in the proper format. There



are instances in which the medical report did not consist the registration of the hospital, registration number of the doctor, age of the patients, age of injury or description of the injuries and so on. Even the case reference on the basis of which the patient was medically examined is also found missing in some reports.<sup>17</sup> As a result of which, when those reports are brought in evidence, due to such technicalities, they become inadmissible in law. Resultantly, the accused persons are getting easy acquittal. Certainly, these drawbacks lead to violation of human rights of the victims' side.

### 13. LITTLE ROLE OF COURTS IN MATTERS UNDER INVESTIGATION

Investigation of any cognizable offence is within the domain of police authorities and not on the court. Court can enquire of any incident only on the basis of a complaint. And after charge-sheet it may try the charged offence. But, in many cases the investigating agencies investigate the incident in the traditional way resulting to technical irregularities which paves the path for easy acquittal of the accused persons. Similarly, large numbers of cases are kept pending in the police stations for years together and when after a lapse of 5 to 10 years the charge-sheet is submitted, then in the mean time the material witnesses either expire or leave the place of given address or become hostile. Finally, culprits are getting easy acquittal. As the court cannot monitor the investigation of an incident, the police authorities are discharging their duties as per their wish. Moreover, there is no guideline in the Code of Criminal Procedure within what time the investigation is to be completed. Due to unfettered power the police authorities are misusing their

powers resultantly they are violating the human rights of the litigants and common people at large.<sup>18</sup>

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## R E F E R E N C E S

- \* Chapter IV. pages 44-95
- \*\* Chapter V pages 96-206.
- 1. Gauhati High Court Annual Report, 2012 page 74.
- 2. Gauhati High Court Annual Report, 2012 page 74-75.
- 3. Guwahati, Barpeta, Nalbari, Cachar, Hilakandi, Tinsukia, Tezpur, Darrang, Bongaigaon, Karimganj.
- 4. Family Court, Cachar.
- 5. Dibrugarh, Cachar.
- 6. ILC-2012-SC-CRL-Aug-10.
- 7. He is the Chief Justice Of India.
- 8. Gauhati Law Times, 2013 Vol-IV.
- 9. Public Prosecutors are appointed by the govt. from the list of advocates that are collected by the District Magistrate from the Bar Association concerned. No formal selection process is followed in preparing the list.
- 9.a. Vide Notification bearing No. HC.VII-1049PT-IV)/2011/1675-A dated 20<sup>th</sup> March, 2014 the Hon'ble Gauhati High Court directed the Public Prosecutors, Additional Public Prosecutors and Assistant Public Prosecutors of Nogaon, Golaghat, Lakhimpur & Sonitpur to attend the one day training programme.
- 10. He (Hon'ble Justice P.Sathshivam) was the chief justice of India and delivered the inaugural lecture of the Gauhati High Court New Court Building.
- 11. Gauhati High Court Annual report, page-51.
- 11.a. Gauhati High Court Annual Report, 2012, page 148.
- 12. [www.indianexaminer.com](http://www.indianexaminer.com).
- 13. Annual Reports of the N.H.R.C. 1997-98, 116.
- 13.a. Section 377 of the Code of Criminal Procedure empowers the state Government to prefer an appeal against inadequate sentence and section 378 of the said Code empowers the District Magistrate or the State Government to prefer appeal against acquittal.
- 14. 2012 GLT V.I 238.

14-a. 198th Report on the WITNESS IDENTITY PROTECTION AND WITNESS PROTECTION PROGRAMMES was chaired by JUSTICE M. JAGANNADHA RAO. The report was published in August, 2006.

15. Information was sought for from ten districts of Assam. Only the Id. Chief Judicial magistrate, Dibrugarh vide her letter No.JDL/30/2014 dated 29-01-14 reported the No. as NIL. The PIO, Cachar vide his letter No. 04/RTI dated 01-02- 14 reported that such information cannot be given because of several points on a single petition. Others did not furnish any report.

16. Doctors issues the medical reports on a vague format prepared by the police. The doctors do not use the prescribed format consisting the relevant factors.

17. See the injury reports for the year 2012-13 lying with the case records, especially for Barpeta District.

18. See chart in the next sub-chapter. This will reflect the fact clearly.

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## EXPOSING THE PROBLEMS THROUGH DATA

### TABLE-1

#### INSTITUTION, DISPOSAL AND PENDENCY POSITION OF CASES IN THE SUBORDINATE COURTS IN ASSAM AS ON 31-12-2012

Sl No.	Civil cases					Criminal cases				
	Name of district	Opening balance as on 01-01-12	Institution from 01-01-12 to 31-12-12	Disposal from 01-12-12 to 31-12-12	Pending as on 31-12-12	Opening balance as on 01-01-12	Institution from 01-01-12 to 31-12-12	Disposal from 01-12-12 to 31-12-12	Pending as on 31-12-12	Total pending civil & crl cases as on 31-12-2012
1	<b>KAMRUP</b>	14014	6133	8365	11782	32506	19663	24585	27584	39366
2	MORIGAO N	1086	793	605	1274	3881	3506	2925	4462	5736
3	<b>NOGAON</b>	3991	2005	2413	3583	17795	21365	21484	17676	21259
4	GOLAGHA T	1369	505	363	1511	4250	10676	9635	5291	6802
5	JORHAT	1295	829	808	1316	6580	6549	7092	6037	7353
6	SIVSAGA R	2188	955	937	2206	6189	9726	9087	6828	9034
7	<b>DIBRUGA RH</b>	1954	1769	1859	1864	13813	15884	19100	10597	12461
8	TINSUKIA	1220	1455	1488	1187	6050	10956	11101	5905	7092
9	DEHMAJI	150	159	154	155	1301	3553	3648	1206	1361
10	LAKHIMP UR	534	430	471	493	3737	8731	6807	5661	6154
11	<b>SONITPU R</b>	2703	2255	1822	3136	9786	10214	10196	9804	12940
12	UDALGUR I	153	105	102	156	789	1760	1469	1080	1236
13	<b>DARANG</b>	2198	1153	1382	1969	10770	8576	10290	9056	11025
14	NALBARI	725	670	708	687	2541	3828	3970	2399	3086
15	<b>BARPETA</b>	2859	1041	1543	2357	10034	5413	6667	8780	11137
16	BONGAIG AON	1505	427	609	1323	3764	7398	6073	5089	6412
17	KOKRAJH AR	379	236	264	351	2713	2923	2239	3397	3748

18	<b>DHUBRI</b>	<b>2605</b>	<b>2020</b>	<b>1776</b>	<b>2849</b>	<b>14096</b>	<b>10521</b>	<b>11306</b>	<b>13311</b>	<b>16160</b>
19	GOALPARA	3149	1668	2519	2298	5179	7346	7347	5178	7476
20	<b>CACHAR</b>	<b>3581</b>	<b>1991</b>	<b>2154</b>	<b>3418</b>	<b>19269</b>	<b>11247</b>	<b>11743</b>	<b>18773</b>	<b>22191</b>
21	<b>KARIMGANJ</b>	<b>2558</b>	<b>2451</b>	<b>2531</b>	<b>2478</b>	<b>6254</b>	<b>6260</b>	<b>4374</b>	<b>8140</b>	<b>10618</b>
22	HAILAKANDI	1662	1087	975	1774	3529	5468	5099	3898	5672
23	SPECIAL JUDGE	-	-	-	-	76	09	17	68	68
24	DESIGNATED COURT	-	-	-	-	68	42	53	57	57
25	FC-I GHY	580	1045	746	879	416	999	707	708	1587
26	FC-II GHY(N)	472	698	562	608	596	902	436	1062	1670
27	FC SLC	196	310	285	221	529	398	386	541	762
28	MACT-I, GHY	3965	996	1308	3653	-	-	-	-	3653
29	MACT-II, GHY	2055	1189	390	2854	-	-	-	-	2854
30	MACT-III, GHY	NA	2174	68	2106	-	-	-	-	2106
31	MACT-NOGAON	1851	703	621	1933	-	-	-	-	1933
32	MACT-NALBARI	1423	460	811	1072	-	-	-	-	1072
33	MACT-BARPETA	1521	291	842	970	-	-	-	-	970
34	MACT-DHUBRI	2521	462	803	2180	-	-	-	-	2180
35	MACT-SILCHAR	6339	776	1313	5802	-	-	-	-	5802
36	CBI COURT GHY	-	-	-	-	192	20	26	50	50
37	ADDL. CBI COURT-I, GHY	-	-	-	-	New	02	-	73	73
38	ADDL CBI COURT-II, GHY	-	-	-	-	New	-	01	64	64
39	LABOUR COURT, GHY	NA	147	50	97	-	-	-	-	97
40	LABOUR COURT-DIBRUGARH	12	33	15	30	30	135	146	19	49
41	INDUST.L TRIBUNAL, GHY	09	01	04	06	-	-	-	-	06

42	INDUSTRIAL TRIBUNAL, DIBRUGARH	Nil	32	10	22	-	-	-	-	22
43	INDUSTRIAL TRIBUNAL SILCHAR	41	14	21	34	-	-	-	-	34
	<b>Total</b>	<b>72863</b>	<b>39468</b>	<b>41697</b>	<b>70634</b>	<b>186733</b>	<b>194070</b>	<b>198009</b>	<b>182794</b>	<b>253428</b>

From the above chart it is clear that the district courts of Kamrup, Dibrugarh, Darang, Sonitpur, Barpeta, Dhubri, Nogaon, Cachar and Karimganj are burdened more. Each courts working in those stations would be having about 1500-2000 cases. Each case is required to be decided in its own merit following the established procedure of law. The cases will require regular hearing, recording of evidence, argument and judgement. In the meantime, due to several reasons including adjournments by the parties, adjournments by the engaged lawyers, reference on the death of advocates-staff and frequent strikes etc. prevalent in this region the functions of the courts would be hampered. Definitely, disposal of cases would take much time in those courts. Once timely disposal is delayed there is violation of human rights. The Motor Accident Claim Tribunal at Silchar carries the highest numbers of cases. The court is having about six thousands cases to be disposed off by a single judicial officer.

In spite of best efforts, it would not be possible for a single court to decide as many as 5802 cases. Definitely, such numbers of cases in a single court would cause unwanted delay in disposing of the cases. Resultantly, the litigants who are expecting justice would be deprived off from speedy results. This factor would lead to violation of human rights of the rights seekers.

**TABLE-2****DEFICIENCIES IN THE SERVICES IN SUBORDINATE JUDICIARY**

<b>Sl. No.</b>	<b>Query from the Respondents</b>	<b>Percent age</b>	<b>Remarks</b>	
1.	<b>Who do not know their case Number</b>	72%	There is every chance of corruption by the unscrupulous persons.	
2.	<b>Who are not satisfied with the sitting/lavatory arrangement in the court</b>	34%	Dignity and image of the system would be hampered.	
3.	<b>Who are not satisfied with the behaviour of the staffs</b>	18%	Do	
4.	<b>Who are not satisfied with the behaviour of the advocates</b>	9%	Do	
5.	<b>Who are not satisfied with the behaviour of the judicial officers</b>	7%	Do	
6.	<b>Who paid money to the staffs during the trial</b>	18%	Do	
7.	<b>Who knows about their rights during the</b>	0%	There must be some sort of awareness camps, may be by the learned Lawyers about	

	<b>proceeding of the court</b>		the minimum rights of the persons coming to the court.
8	<b>Who made the system responsible for delay in delivering justice</b>	Advocate = 19% Advocates clerk = 10% Staffs = 2% Judicial Officers = 22% All = 19% No comment = 20%	There must be check and balance at all level so that the eroded reputation of the system would be revived. Further, some mechanism must be sorted out so that people would understand as to who are the persons attached to the real works of the courts and who are not. Once they can identify the groups, what step they might take for future course of action.

Deficiencies in the justice delivery system consist of lack of infrastructure such as sitting arrangement, witness shed, lavatory for men and women, canteens; lack of facilities for easy access to the system, lack of basic information system promptly, lack of transparency and accountability among the office bearers. It includes lack of the expected behavior from the court and accompanying persons. It includes the hurdles which keep the litigants far off from getting fair and uninterrupted justice.



Deficiencies in services include corruption too. Corruption again has various facets. In various fields it consists of different factors. In case of justice delivery system, it consists of paying money to the advocates including Government Advocates, advocates' clerk, staffs working in the court, Prosecuting Sub-Inspector and his staffs, police detailed for law and order, judicial officers and similarly the attached persons. For a common man everybody who is associated in the court including the advocates and their clerks consist the justice delivery system. Even delay caused for the justified or unjustified grounds of an advocate or his clerk is treated by the litigants as delay caused by the court. Common men cannot identify the persons with whom the justice delivery system really consists of. A field survey has been conducted by me covering Cachar, Karimganj, Guwahati, Goalpara, Barpeta, Kokrajhar, Dhemaji, Nogaon and Dibrugarh districts. The common litigants, witnesses, attendants to the parties, advocates and prosecutors have been the respondents to the survey. The respondents have been asked to be free with the investigator but most of them declined to put their signatures on the feedback form. Even many of them declined to get their names and addresses recorded. The investigation so far conducted and the result thereof has been cited herein below:

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**TABLE-3****NUMBERS OF CASES PENDING FOR LAST TEN YEARS IN THE  
POLICE STATIONS IN ASSAM**

Sl. No.	Names of the district	General cases			Cases triable by a court of sessions pending for last 8 years
		Cases pending since 2004	Cases pending since 2005	Cases pending since 2006	
1	BONGAIGAON	NIL	NIL	2	NIL
2.	DHEMAJI	NIL	NIL	NIL	NIL
3.	GOLAGHAT	823	924	848	NIL
4	DIBRUGARH	01	03	NIL	NIL
5	KARBI ANGLONG	03	02	1	183
6	DHUBRI	06	07	23	1
7	NALBARI	02	NIL	05	NIL
8	SONITPUR	07	03	39	6
9	DIMA HASAO	02	07	14	NIL
10.	UDALGURI	1	1	7	1
11.	JORHAT	NIL	NIL	3	NIL
12.	DARRANG	NIL	NIL	NIL	NIL
13.	KAMRUP (rural)	1	4	12	7
14.	KOKRAJHAR	4	1	1	NIL
15.	CACHAR	3	24	77	1755
16.	GOALPARA	6	7	3	NIL

The aforesaid data has been collected from the Superintendent of Polices\* through the Director General of Police, Assam for last ten years about the pendency, institution and disposal of cases in the police stations. In spite of the

specific direction of the Assistant Inspector General of Police, (A) & PIO, Assam vide his office Memo No. G(RTI)/VI 262/2013/3 dated 27th November, 2013 some of the district police authorities did not furnish the information.\*

The above information which is received from sixteen districts of Assam reveals that even some important and heinous cases including sessions triable cases are pending for last eight to ten years. The date of the report was as on 30-10-2013. It is stated in the preceding chapter that the courts of law have no role during investigation of any incident. It is within the domain of the police authorities. Definitely, in the cases which are pending for investigation for a considerable period without any just cause would diminish the reality of the incident. In such situations, the victims would be deprived off from getting justice. Since there is no specific time frame for completion of the investigation and the court cannot monitor investigation, the matters are pending for years together.

\* it is surprising that the Asstt. Public Information Officer of the office of the Supdt. Of Police, Barpeta vide his letter No. BPTA/V/13/21327 dated 10-12-2013 reported that the information sought for cannot be given since no such data is maintained in his office.

**TABLE-4**  
**NUMBER OF WOMEN POLICE OFFICERS WORKING IN THE STATE OF ASSAM**

SL. NO.	NAME OF THE DISTRICT	NOS OF POLICE STATIONS	NO. WOMEN POLICE OFFICERS
1	BONGAIGAON	<b>Not furnished</b>	<b>NIL</b>
2	DHEMAJI	<b>7</b>	<b>1</b>
3	GOLAGHAT	<b>12</b>	<b>2</b>
4	DIBRUGARH	<b>13</b>	<b>NIL</b>
5	KARBI ANGLONG	<b>Not furnished</b>	<b>NIL</b>
6	DHUBRI	<b>12</b>	<b>02</b>
7	NALBARI	<b>7</b>	<b>NIL</b>
8	SONITPUR	<b>13</b>	<b>01</b>
9	DIMA HASAO	<b>8</b>	<b>01</b>
10.	UDALGURI	<b>10</b>	<b>01</b>
11.	JORHAT	<b>11</b>	<b>02</b>
12.	DARRANG	<b>06</b>	<b>01</b>
13.	KAMRUP (rural)	<b>11</b>	<b>2</b>
14.	KOKRAJHAR	<b>8</b>	<b>1</b>
15.	CACHAR	Not furnished	Not furnished
16.	GOALPARA	Not furnished	Not furnished

Section 154 (1) of the Code of Criminal Procedure, as amended in 2013 provides that statements of the victims of the offences punishable under sections 326-A, 326-B, 354, 354-A, 354-B, 354-C, 376, 376-A, 376-B, 376-C, 376-D, 376-E

and 509 of the Indian Penal Code be recorded by women police officers. This is intended to preserve the chastity, dignity and privacy of the female community who deserve respect and protection. This is so made with intent that female victims would be able to express the real facts without any encumbrance which normally they face before the man police officers.

But from the chart above it would reflect that there is less numbers of women police officers in the police stations. Out of 10-13 police stations in a district, there is only one or two women police officers having power of investigation. Even, one police station does not have a single woman police officer. The offences under the sections of law noted above are happening within the jurisdiction of each police stations but each police station does not have even one number of women police officer. It is reported by the authorities that statements of victim of the above cases are recorded in the presence of woman police constables. As the court of law has no role during the time of investigation, the rights of the women as guaranteed by the above sections are not protected well. In this juncture, it is definite that the mandate of law which protects the chastity of the women folk is not followed in its true perspective. Resultantly, there is violation of human rights.

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**TABLE-5****PRISON INMATES IN ASSAM AS ON 31-12-2012\***

Sl No.	Name of jail	Location	Total sanctioned capacity	Actual capacity			
				No of convicts	No of under trials	Others	Total
<b>C E N T R A L J A I L S</b>							
1	Central Jail Guwahati	Guwahati, Sarusajai Dist. Kamrup	1000	201	792	7	1000
2	Central Jail Tejpur	Tejpur, Dist. Sonitpur	747	181	265	2	448
3	Central Jail Silchar	Silchar, Dist. Cachar	429	188	222	14	424
4	Central Jail Dibrugarh	Dibrugarh, Dist. Dibrugarh	680	247	347	4	598
5	Central Jail Jorhat	Jorhat, Dist. Jorhat	670	302	235	1	538
6	Central Jail Nogaon	Nagaon, Dist. Nogaon	424	112	320	1	433
<b>D I S T R I C T J A I L S</b>							
7	District Jail Nalbari	Nalbari, Dist. Nalbari	<b>155</b>	<b>84</b>	<b>193</b>	<b>1</b>	<b>278</b>
8	District Jail Barpeta	Barpeta, Dist. Barpeta	<b>213</b>	<b>92</b>	<b>238</b>	<b>2</b>	<b>332</b>
9	District Jail Kokrajhar	Kokrajhar, Dist. Kokrajhar	<b>225</b>	<b>59</b>	<b>222</b>	<b>40</b>	<b>321</b>
10	District Jail Dhubri	Dhubri, Dist. Dhubri	<b>221</b>	<b>81</b>	<b>160</b>	<b>0</b>	<b>241</b>
11	District Jail Goalpara	Goalpara, Dist. Goalpara	<b>270</b>	<b>99</b>	<b>198</b>	<b>62</b>	<b>359</b>
12	District Jail Mangaldai	Mangaldai, Dist. Darrang	<b>172</b>	<b>140</b>	<b>216</b>	<b>1</b>	<b>397</b>
13	District Jail Hailakandi	Hailakandi Dist. Hailakandi	<b>58</b>	<b>64</b>	<b>29</b>	<b>0</b>	<b>93</b>

14	District Jail Karimganj	Karimganj, Dist. Karimganj	<b>154</b>	<b>105</b>	<b>142</b>	<b>1</b>	<b>248</b>
15	District Jail North Lakhimpur	North Lakhimpur Dist. North Lakhimpur	<b>202</b>	<b>139</b>	<b>138</b>	<b>6</b>	<b>283</b>
16	District Jail Sivasagar	Sivasagar, Dist. Sivasagar	<b>300</b>	<b>181</b>	<b>392</b>	<b>3</b>	<b>576</b>
17	District Jail Golaghat	Golaghat Dist. Golaghat	<b>198</b>	<b>128</b>	<b>259</b>	<b>0</b>	<b>387</b>
18	District Jail Majuli	Majuli, Dist. Nogaon	55	7	29	0	36
19	District Jail Abhayapuri	Abhayapuri Dist. Bongaigaon	<b>50</b>	<b>28</b>	<b>76</b>	<b>0</b>	<b>104</b>
20	District Jail Diphu	Diphu, Dist. Karbi Anglong	<b>260</b>	<b>74</b>	<b>350</b>	<b>1</b>	<b>425</b>
21	District Jail Hamren	Hamren, Dist. Karbi Anglong	40	9	27	0	36
22	District Jail Biswanath Chariali	Dist. Tezpur	<b>94</b>	<b>104</b>	<b>145</b>	<b>1</b>	<b>250</b>
23	District Jail Dhemaji	Dhemaji, Dist. Dhemaji	<b>130</b>	<b>82</b>	<b>145</b>	<b>0</b>	<b>227</b>
24	District Jail Morigaon	Morigaon Dist. Morigaon	252	122	86	1	209
25	District Jail Sonari	Sonari, Dist. Sivsagar	50	27	0	0	27
26	District Jail Tinsukia	Tinsukia Dist. Tinsukia	<b>375</b>	<b>161</b>	<b>293</b>	<b>1</b>	<b>455</b>
27	District Jail Sadiya	Sadiya Dist. Sadiya	50	25	6	0	31
<b>S U B J A I L S</b>							
28	Sub Jail Haflong	Haflong N.G. Hills	<b>32</b>	<b>1</b>	<b>78</b>	<b>0</b>	<b>79</b>
<b>O P E N J A I L S</b>							
29	Open Air Jail Jorhat	Jorhat, Dist. Jorhat	100	31	0	0	31
<b>S P E C I A L J A I L S</b>							
30	Special Jail Nagaon	Nagaon Dist. Nagaon	372	67	147	3	217

\*Report of the National Crime Reports Bureau.

Thus, from the above table, it is crystal clear that in the districts of Nalbari, Barpeta, Kokrajhar, Dhubri, Goalpara, Mangaldoi, Hailakandi, Karimganj, North Lakhimpur, Sivsagar, Golaghat Bongaigaon, Karbi Anglong, Biswanath Chariali, Dhemaji, Tinsukia and N.C.Hills the jails are over crowded. When the numbers of inmates are higher than the capacity it has, it is imperative that the living condition would not be up to the mark. Similarly, the diet for the inmates would also be deficient. The medical facilities including condition of the indoor patients would also be miserable. Definitely, in such a situation the living condition with basic amenities for the prison inmates would not be available. This would definitely lead to violation of human rights.

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**TABLE-6**

**WORKING STRENGTH OF THE JUDICIAL OFFICERS IN  
ASSAM AS ON 26-11-2013\***

	<b>Sanctioned strength</b>	<b>Working strength</b>	<b>vacant</b>
<b>Grade-I</b>	<b>105</b>	<b>72</b> <b>(one officer is on deputation)</b>	<b>34</b>
<b>Grade-II</b>	<b>90</b>	<b>76</b> <b>(two officers are on deputation)</b>	<b>16</b>
<b>Grade-III</b>	<b>195</b>	<b>104</b>	<b>91</b>
<b>Total</b>	<b>390</b>	<b>252</b>	<b>141</b>

\*information received from the Hon'ble Gauhati High Court vide letter No. HC. XXXV-12/2013 /252/RTI dated 27th November, 2013 issued by the Dy. Registrar (Judl) & Asstt. P.I.O. Gauhati High Court.

From the above chart it is crystal clear that as many as 141 Numbers of posts were lying vacant. In such a situation, in the absence of the presiding officers, the cases become irregular. In vacant courts normally parties to the proceeding do not turn up in time because they know the futility of appearance. Witnesses who use to come to the court on their own cost take bitter experience when the court remains vacant.

In the previous chapter it has been pointed out that the numbers of judicial officers in our country is much less than other countries in the world. That apart, if the existing courts also remain vacant then the miseries of the common people would be beyond expression. All these factors would lead to violation of human rights.

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**TABLE-7****MIS-USE OF THE POWERS BY POLICE UTHORITIES**

<b>SL. NO.</b>	<b>Case No.</b>	<b>Date of filing the complaint in the court</b>	<b>Case No.</b>	<b>Date of registration by the Police</b>	<b>Registration after about</b>
1	38-C/2012	16-03-2012	Patacherkuchi P.S. Case No.161/ 2013 U/S. 406/ 427/ 294/506 I.P.C.	04-05-2013	One year
2	64-C/2012	17-04-2012	Patacherkuchi P.S. Case No.160/ 2013 U/S. 498- A/34 I.P.C.	04-05-2013	One year
3	70-C/2012	21-04-2012	Patacherkuchi P.S. Case No.164/ 2013 U/S. 341/ 294/ 354/ 254/ 307/323/379/50 6 I.P.C.	04-05-2013	One year
4	125-C/2012	21-06-2012	Patacherkuchi P.S. Case No.163/ 2013 U/S. 326/324/ 379/ 506/34 I.P.C.	04-05-2013	One year
5	81-C/2012	30-04-2012	Patacherkuchi P.S. Case No.157/ 2013 U/S. 447/427/ 379/506/34 I.P.C.	01-05-2013	One year
6	116-C/2012	08-06-2012	Patacherkuchi P.S. Case No.155/ 2013 U/S. 341/323/ 354/ 307/34 I.P.C.	01-05-2013	One year
7	43-C/2012	20-03-2012	Patacherkuchi P.S. Case No.156/ 2013 U/S. 341/326/ 380/34 I.P.C.	01-05-2013	One year

From the above statement it is seen that the victims as complainant filed the complaint before the court of law seeking justice. The court of law for better investigation, directed the police authorities for investigation of the incidents in accordance with law. Surprisingly, the chart makes it crystal clear that even after specific direction by the court for enquiry on a complaint, the Officer-in-Charge of the Patacherkuchi Police Station, Barpeta did not do anything on the complaints. He got the cases registered about one year later from the date of the order of the magistrate.

As the court has no role to play during investigation of an incident the cases remained pending for a considerable period. Definitely, initiation of the enquiry or investigation after such a long period would diminish the material evidence and capacity of the complainant to pursue the case. These are not exhaustive but some examples. God knows how many such cases are still pending in similar situation.

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