CHAPTER VII

C O N C L U S I O N

In the Chapter number- I[a] the investigator has pointed out the motto of the research work. The research work was investigative on the several human rights attached with the functioning of subordinate courts, particularly, in the state of Assam. It also contains the analytical approach on the research work so as to bring out the actual position of the protection of human rights, violation of human rights and the problems in protecting those rights by the subordinate courts. The hypothesis of the research work was 'human rights need to be protected in subordinate judiciary'. Basing on the hypothesis, the works have been progressed and definite conclusions have been arrived at with statements and reasons of such suggestions.

In Chapter number-II[b] the investigator has pointed out the different kinds of courts working in the state of Assam which can be categorized as subordinate courts. This included the courts of District and sessions Judge in the upper level and the Judicial Magistrate of the second class in the lower level. It also includes the executive magistrates and other tribunals. In Chapter number-III[c] I have

discussed the nature of cases dealt in by the subordinate courts in detail.

In Chapter Number-IV[d] the relevant provisions of the international human rights instruments and the rights which are directly or indirectly relate to the function of subordinate judiciary have been discussed. This chapter basically exhausted the Bill of International Human Rights consisting of the Universal Declaration of Human Rights, 1948; the International Covenant on Civil and Political Rights,1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. Apart from the above, a brief note on the Convention on the Rights of the Child, 1989 and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, 1984 has also been made.

In chapter Number-V[e] the several kinds of human rights enumerated in the domestic laws have been discussed. This chapter comprises the provisions of law as enshrined in the Constitution of India, decisions of the Hon'ble Supreme Court of India and other High Courts, the rights under the statutory laws such as by the Code of Criminal Procedure and Protection of Human Rights Act, 1993.

In Chapters number-VI[f] the points as to whether the human rights as recognized by the international instruments and domestic laws are really protected by the subordinate courts in Assam or not have been discussed. This chapter also reflects the problems, deficiencies and hurdles in protecting such human rights by the subordinate courts. A sub-chapter is appended thereto showing the data which reflects the different branches of the system culminating violation of human rights.

Now, coming to the last chapter that is Chapter number VII, after meticulous scrutiny, the following suggestions are proposed so that the Governments and the other concerned authorities may take note thereof and shall pass necessary laws, ordinances, notification etc. so that the lacunae and drawbacks standing today towards protecting human rights by the subordinate courts can be come over and the human rights of the stake holders would be protected in better form than earlier.

For clarification, it is mentioned herein that the suggestions are supported by the statements and reason thereof and for which the suggestions are provided after the statements and reasons in each sub-headings.

S U G G E S T I O N S

1. COURT MUST BE SENSITIVE

Statement and reasons: It is said that Judges or magistrates are the representatives of God. The function of a judge is divine. It is sacrosanct. It is pure. Therefore, it requires that justice is not only done to the parties but it must appear to have been done. Ordinarily, judges are to decide cases as per the procedural law basing on the materials available before it. But, in doing so, due to the technicalities of the man made legal procedure, sometimes the parties are deprived off or the parties feel to have been deprived off from getting real justice.

Though courts are concerned only with disputes brought before it, judges as conscience-keepers of society responsible for justice and rule of law. They are required to have a balanced view of events seeking change in established values and practices. Court cannot deny remedies when there is injustice and violation of rights. In the case of *Municipal Council, Ratlsm v. Vardichand*[1] the apex court held that juridical process is not to be confined to adjudicatory functions but to be adapted to affirmative actions to make remedies effective.

Similar proposition has been laid down the Hon'ble Supreme Court of India in the cases *Gauri Shanker Sharma etc. v. State of U.P. etc.*[2] and *State of Madhya Pradesh v. Shyamsunder Trivedi and Ors.*[3]

Suggestion: Therefore, if the courts of law become sensitized to protect the human rights of the common people, then by using the appropriate mode within the parameter of law, court would be able to deliver justice in its proper perspective. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve. To achieve this goal regular sensitization programme on various facets of human rights among the judicial officers, staffs and advocates may be organized.

2. COURT MUST INNOVATE

Statement and reasons: Extraordinary situations demand extraordinary remedies. While dealing with an unprecedented case, the Court has to innovate the law and may also pass unconventional order keeping in mind that extraordinary fact situation requires extraordinary measures. If the court of law passes an order directing the parties to maintain *status quo* in respect of certain construction works, subsequently violation of such order could not be proved due to lack of material and ocular evidence in as much

as the parties would make counter-reply. Therefore, if it is directed that photographs of the disputed construction works is taken up on the date of the passing of the order at the behest of the court, definitely, it would assist the court in maintaining the *status quo* and to decide on the point of its violation. Similarly, if the father of an inmate expires, even though he is not allowed to go on bail, if an interim arrangement is made so that he would be able to participate the last rituals on the demise, it would prove the judgeship of a judge. These are instances of innovation in as much as there is no specific law in these regard.

In *B.P. Achala Anand v. S. Appi Reddy and Anr.*[4] the Hon'ble Supreme Court observed: '*Unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by Courts, transforms into justice. Thus, it is evident that while deciding the case, the Court has to bear in mind the peculiar facts, if so exist, in a given case***.**' As for instance, if a woman with a baby appears before the court either as a complainant or as an accused or as a witness is detained in the court like other people, then naturally the women and the baby would become victim. Therefore, if her case is taken up with priority, then naturally she would feel unburdened from the experienced delay in the queue. Although there is no specific law in

this regard, yet, due to the innovative role of the court the human rights of the people would be protected.

Suggestion: Therefore, when the circumstances so desires, the courts must endeavour to innovate the ideas so that even in the absence of any specific provisions of law appropriate remedies would be provided to the litigants. If on the procedural technicalities, the litigants are deprived from justice, then the system will fail.

3. IMPROVEMENT OF COURT ATMOSPHERE

Statement and reasons: A more serious ground which disturbs the courts in more ways than one is the alleged absence of congenial atmosphere for a fair and impartial trial. It is becoming a frequent phenomenon in our country that court proceedings are being disturbed by rude hoodlums and unruly crowds, jostling, jeering or cheering and disrupting the judicial hearing with menaces, noises and worse. This tendency of toughs and street roughs to violate the serenity of court is obstructive of the course of justice and must surely be stamped out. Likewise the safety of the person of an accused or complainant is an essential condition for participation in a trial and where that is put in peril by commotion, tumult or threat on account of pathological conditions prevalent in a

particular venue, the request for a transfer of a case from this court to the other may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear to present one's case, bring one's witnesses or adduce evidence. Indeed, it is the duty of the court to assure propitious conditions which conduce to comparative tranquility at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice.

The court rooms and sitting arrangement of some of the courts are miserable. As for instance, the court room of the Chief Judicial Magistrate, Kamrup, Guwahati is too small to accommodate 25 people at a time. It is in the capital of the state. The bar consists of more than three thousands lawyers. As many as 60-75 cases are fixed everyday. Definitely, advocates, lawyers, advocates clerk, litigants are to appear before the court. But due to the un-spacious court rooms the people as a whole are suffering a lot. Similar situation is prevailing in almost all the courts which are working in the old patterned buildings. There are instances[5] where two-three judicial officers are to share a single chamber. Male and female officers are to share a common lavatory and so on.

Suggestion: Therefore, the environment of the court must be made congenial from all corners. It must be free from all sorts of pollution. It must be well equipped with the security personals and modern technologies including C.C.Camera TV. Etc. Further, the aforesaid problems must be looked into by the authorities concerned so that such basic facilities would encourage the officers in protecting the human rights of the people with best enthusiasm.

4. PROTECTION OF WITNESS

Statement and reasons: "Witnesses" as Bentham[6] said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their bench men and hirelings,

political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smoother and trifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression, and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. As *on today there is no such specific law or rules giving protection of the witnesses.* As a result of which, for the reasons stated above, many cases in which the accused are powerful with force, money or ill reputation, the witnesses do not support the case of genuine parties although they were the eye witnesses of the alleged incident/transactions**.**

Suggestion: Considering the above, the suggestion as prescribed in the 198th report of the Law Commission of India ON WITNESS IDENTITY PROTECTION AND WITNESS PROTECTION

PROGRAMMES, AUGUST 2006 chaired by Hon'ble Mr. JUSTICE M. JAGANNADHA RAO be implemented without late. The suggestions to the effect that i. We can have a two-way closed-circuit television with a video screen in each of two different rooms. The victim-witness will be present in a room and in that room, the prosecutor; the defence lawyer and the technical personnel who operate the close-circuit television will also be present. The Judge and the accused, the technical personnel, the court master and stenographer, will be in the Court room and ii. Where the victim-witness or other witnesses seek identity protection at the trial, it is necessary to protect their identity at the stage of investigation, inquiry and before trial be enacted as laws of the land.

5. DIET MONEY TO WITNESS

Statement and reasons: Witnesses are part and parcel of a proceeding. It is believed that they have nothing personal with any of the parties. Particularly, in cases for or against the Government when witnesses are called upon to adduce evidence then they are to come from far off places at their own cost. Resultantly, the poor vagrant people suffer a lot. They are to expense for the sake of others. It matters them. Section 312 of the Code of Criminal

Procedure, 1973 provides for paying reasonable expense to the witness by the court from the fund allotted by the Government. But it is utter surprise that in most of the cases the witnesses are not paid their diet money. The Hon'ble Supreme Court of India in the case of *Swaran Singh v. State of Punjab*[7] held that proper diet money must be paid immediately to the witness after his examination is over and not only when he is examined but for every adjourned hearing. The report as to in how many cases diet money was paid was sought for from the Hon'ble Gauhati High Court. The report was so sought for with an expectation that all the other courts are subordinate to it. But the sought for report has been denied.[8]

Suggestion: Therefore, the authorities must do the needful so that proper diet money would be paid to the witnesses who deserve to be paid in appropriate cases. This step will not only protect the right of the witnesses but also will protect the sanctity of the court on which people have confidence like anything.

6. ADOPTING THE CONCEPT OF VICTIMOLOGY

Statement and reasons: Our system, as it stands today allows a very little role to be played by the victims of incidents. The office of the Public Prosecutor or Government Pleader as the case

may be are not well trained in this regard. They are appointed without any interview or test. Resultantly most of them are not concerned about the victim. They are not aware about the rights of the victim as contemplated in sections 357 and 357-A of the Code of Criminal Procedure. Victims being the main part of the criminal proceedings must be allowed to take part in the proceeding. The victim may be allowed to be represented by an advocate of his choice. The concept may be taken from The Victims of Crime Act, (VOCA)[9] which grants certain valuable rights to victims to enable them to have access to justice. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985[10] convened by the International Community may also be taken into consideration to achieve the goal.

It may at once be mentioned that the legislature has not yet given the victim the absolute right to appeal against any order of the trial Court. The most significant absence is the right to appeal against the inadequate sentence. It may be apt to state that whereas this right could have been exercised in countless cases where the sentence imposed is the minimum imposable, it would be even more pronounced in cases of victims of rape and sexual offences where it is endemic that less than minimum sentence prescribed under the law is imposed and which has generated and entire separate jurisprudence

on the issue. Be as it may, the largesse of the legislature in recognizing, accepting and granting the right of appeal to the victim in the aforesaid three circumstances is complete. It rings eloquent by the emphasized words "the victim shall have the right to prefer an appeal".

Suggestion: Therefore, the law must be changed allowing the victim or their representatives to prefer appeal against the order sentencing disproportionately. The victims must be allowed to participate in criminal trial actively so that if any important witness or document was not examined or produced by the prosecuting agencies owing to one reason or the other, the same could be examined or produced during the trial for arriving at a just decision of the dispute in hand. This will definitely boost towards protection of human rights more and more.

7. STRENGTHENING NUMBERS OF JUDGES

Statement and reasons: As on 1st November, 2013 the total number of vacancies in strength of the Supreme Court Judges is only 1. Thus, 30 out of 31 is the present working strength. Whereas, in High Courts the total sanctioned posts of Judges is 906 out of which 256 are vacant. Particularly, in our state out of 24 sanctioned posts 8 are lying vacant.[11] As on 27-11-2013 out of 380

judges in the subordinate courts of Assam 141 courts are lying vacant[12].

It is worthy to note herein that the current ratio in India is 12 or 13 Judges per million, whereas 12 years ago it was about 41 in Australia, 75 in Canada, 51 in the United Kingdom and 107 in the United States. Inadequate number of Judges and inadequate manpower in the justice administration system are the two long identified pending issues. In *All India Judges' Association vs. Union of India*[13] and in the Law Commission's reports as well as in the Parliamentary Standing Committee Report, there are suggestions to increase Judge Strength five-fold and to fill up the vacancies. Increase in the number of judicial officers will have to be accompanied by proportionate increase in the number of court rooms. Recently, the times of India published a manifesto inviting response from people all over the country on several points including the point 'there is need to improve judge-population ratio'. As many as 2408 persons responded to the point and out of them 95% supported the same.[13.a]

Suggestion: Therefore, appropriate steps must be taken by the authorities by the Hon'ble Gauhati High Court and the State Government to strengthen the numbers of judges in the subordinate

courts of Assam at least to 50 per million so that human rights of the litigants would be protected better then before.

8. CURTAILING ADJOURNMENTS

Statement and reasons: Adjournment is one of the worst factors for causing delay in speedy disposal of litigations. In genuine and justifiable reasons adjournment must be allowed, otherwise, the same would cause miscarriage of justice. However, there are instances when some clever litigants or their pleaders in order to defray the cause of justice take or attempt to take adjournments. Considering the unjustified ground when such adjournment is disallowed, they take the privilege of filing revision petition with intent to cause further delay. As a result of which the genuine claims of the victims are delayed.

Suggestion: Therefore, the routine demands for adjournments made by litigants or lawyers should be carefully analyzed and granted only in circumstances where the lack of such adjournments would lead to a miscarriage of justice. Once this principle would be followed in its real perspective, hopefully human rights would be protected well than before.

9. DIRECTION FOR FURTHER INVESTIGATION

Statement and reasons: It is significant to note that the provisions of Section 173(8) of the Code of Criminal Procedure opens with a non-obstante clause that nothing in the provisions of Section 173(1) to 173(7) shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate. Thus, under Section 173(8), where charge-sheet has been filed, that Court also enjoys the jurisdiction to direct further investigation into the offence. And once such role is played by the court naturally it would strengthen human rights.

Once the investigation is conducted in accordance with the provisions of the Code of Criminal Procedure, a police officer is bound to file a report before the Court of competent jurisdiction, as contemplated under Section 173 Code of Criminal Procedure. Basing on the report the Magistrate can proceed to try the offence, if the same were triable by such Court or commit the case to the Court of Sessions as the case may be. However, there are occasions that the police investigating agencies for one or more reasons[14] without proper investigation submit Final Report[15]. When the victim is called upon to the court to apprise his stand on such report it is contended that the

investigating officer did not record the statements of material witnesses and/or did not collect the evidence which would otherwise prove the accusations against the accused. It has been held in *Shri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandha Maharaj v. State of Andhra Pradesh and Ors.*[16] that the casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all potential accused to be afforded with the opportunity of being heard.

Suggestion: Therefore, once it is reported to the court that the police authorities made faulty investigation, then the court concerned should not sit idle. The matter may be referred back to the police authorities for further investigation. It would be advisable that the further investigation is conducted not by the earlier investigating officer but by some other officer who is efficient in this field.

10. ALLOWING INTERVENOR TO PARTICIPATE IN TRIAL

Statement and reasons: There are occasions where some persons might be interested in a proceeding either civil, criminal or proceeding of other nature. Such person might be interested either as a plaintiff or defendant or even as a witness or well wisher of the parties or to the system. In such a situation, although the person

concerned is not a party to the proceeding nor the court called him at any capacity, allowing him to participate in the proceeding may assist the court in arriving to a fair decision. The aforesaid proposition has been initiated by the Hon'ble Supreme Court of India in the case of *Samaj Paribartan Samuday & Ors. v. State of Karnataka & Ors.*[17]

Suggestion: Provisions are required to be made in the procedural laws that a person may assist the court as an intervener in appropriate cases although he is not a party or witness. If such provision is made in the procedural laws to the effect that such a person or body of persons is heard then the court would be in a position to appreciate the fact properly so as to arrive at a just conclusion.

11. ENCOURAGING JUDGES TOWARDS ALTERNATIVE DISPUTE RESOLUTION

Statement and reasons: Code of Civil Procedure, 1908 carries section 89 which formulates four methods to settle disputes outside the court. These are:- a. Arbitration b. Conciliation c. Lok Adalat d. Mediation. Apart from the above, the concept of 'plea bargaining'[18] and 'compounding of offences'[19] under the Code of Criminal Procedure, 1973 as amended till date are also the ways to

dispose of cases early which are the demand of the right seekers. The learned Officers working in the regular courts are applying those provisions and disposing cases to a large extent through all means other than 'plea bargaining'. In fact, disposal through the aforesaid mode is the need of the hour and vividly suggested by the higher courts.

Suggestion: For achieving speedy justice in accordance with law it is required that incentives are given for disposal of appropriate cases through the Alternate Dispute Resolution System including the provisions of plea bargaining then naturally the presiding officers of the courts would adhere to those provisions more and more and resultantly there would be more disposal. More the disposal is, more the protection of human rights would be prevalent.

12. IMPROVEMENT OF THE EXISTING POOR BUDGETARY SUPPORT

Statement and reasons: Inadequate allotment of budget and poor budgetary support results in paucity of funds. It is being mentioned in various quarters that approximately 0.01% of the Gross National Product (GNP) is the budgetary allocation to the judiciary whereas in countries like U.K. and U.S., it is several times

more. It is common experience that when it comes to mounting arrears and delay in disposals, comparisons are drawn to such countries, but when providing infrastructure and budgetary allocations to the judiciary, such comparisons are forgotten.

The judiciary has no financial autonomy. The expenses pertaining to administration of justice in the States are being incurred by the respective States. Under some Central Government Schemes, funds are made available by the Ministry of Law and Justice to States. Such Schemes include establishment of Fast Track Courts and Gram Nyayalayas. No fund is received directly from the central government. Now the courts are provided only with budgetary allocation for the payment of salaries of staff members of the courts and for day to- day expenses for running the courts.

Suggestion: To change the exiting poor budgetary position the state government as well as the central government must sanction sufficient funds every year for starting new courts and also to improve the conditions of the existing courts. Establishing new courts and improvement of infrastructure under the independent budgetary provisions would definitely improve the system more and more.

13. ACCESS TO JUSTICE BY WAY OF JUDICIAL ACTIVISM

Statement and reasons: The words 'access to justice' focuses on two basic purposes of the legal system namely 1. the system must be equally accessible to all and 2. it must lead to results that are individually and socially just. But the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy and ignorance etc.. India has been found to rank 27th among 35 countries in providing civil access to justice[20], according to the World Justice Project's Rule of Law Index, a new tool designed to measure countries' adherence to the rule of law. Clearly, the efforts taken in India are lagging behind.

The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintaining their aloofness and independence; the Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people. Judicial activism is one such initiative taken by the judiciary to give a platform to justice to disadvantaged sections of society, an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows

them to participate in government decision making. Apart from expressing the judicial activism in the orders and judgements, a judge can play the role by invoking the powers as provided under section 190(c) of the Code of Criminal Procedure.[20.a]

Suggestion: By invoking the powers as contemplated in section 190(c), 311 of the Code of Criminal Procedure, Order-XVII R-17 of the Code of Civil Procedure and the rights[21] under the National Legal Services Authorities, 1987 the courts of law even in the district level would be able to protect the human rights of the stake holders.

14. ADAPTABILITY WITH GLOBALIZATION

Statement and reasons: Globalization exposes us to ideals and thoughts that transcend national boundaries and traditional legal system. The emergence of new economy–globalization, privatization and deregulation has thrown up new challenges in all systems. Today, there are revolutionary changes in information, communication and transportation technologies which require corresponding changes in the legal system too. Many highly specialized areas of law like Intellectual property, Corporate law, Cyber law, Human rights, Alternative dispute resolution and International business transactions have to be given due attention by

the lawyers and Judges as it would help the country move forward and keep up with the rest of the world.

Suggestion: Therefore, if the officers of the subordinate judiciary keep touch with the global changes in all respects, definitely they would be able to transform the same in the present scenario, particularly the fact situation in the case in hand. In achieving the goal, training programme on the change of legal scenario in the universal level may be imparted to the officers. Resultantly, the rights of the litigants would be secured more and more.

15. TRANSPARENCY AND ACCOUNTABILITY IN THE PROCESS OF ADJUDICATION

Statement and reasons: Accountability of Judges is as important as the accountability of any other branch of the government. The judiciary, in fact, is accountable to the law of the land which ensures peace, order and good governance in the society. It is also accountable to the society for an orderly behavior of the people living therein. Admittedly, it is for the best unbiased efforts of the judiciary, the little rights of the citizens and people living in the country as a whole are protected. Still people expects more and more from the judiciary in as much as it is the last resort in which people have still god faith and confidence.

Though the techniques of realizing judicial transparency and accountability are numerous, the people have to be more informed about them to attain two inter-related objectives. Firstly, it will help the civil society in keeping their faith in the judiciary and secondly, it will motivate the judges to exhume their full potential. It is claimed that the most accountable and transparent wing of the government in our country is the judiciary. It is the judiciary in which things are found clear and easier. But, in spite of that if more transparency and accountability can be introduced, then it will become the most transparent in the world.

Suggestion: Therefore, if the judges of the subordinate courts become more accountable and transparent in their day to day activities within the parameter of law, then definitely the human rights of the common people would be secured more and more.

16. EFFORTS FOR SPEEDY AND EFFECTIVE JUSTICE

Statement and reasons: In the subordinate courts of Assam, the total pendency of civil and criminal cases by the end of December, 2012 was 2,53,428.[22] Interestingly, the number of cases that are resolved each year has increased substantially over the last decade. However, this has not kept pace with the increase in fresh

filings. Since fresh cases exceed the number of cases getting resolved, this leads to an increase in pendency.

As stated above, the routine demands for adjournments made by lawyers should be carefully analyzed and granted only in circumstances where the lack of such adjournments would lead to a miscarriage of justice. In disposing the cases or taking hearing of the daily proceedings, the cases which pertains the rights and liberties of senior citizens, disabled persons or women folk may be given priority. Cases which are old pending may be tried with full devotion. In addition thereto, the need for brevity of court proceedings can hardly be overstated. Brevity in the proceeding of the court would definitely lead to speedy justice.

Suggestion: Judges should attempt to curtail lengthy and unnecessary arguments and limit the time allowed for presenting arguments. Further, Judges should seek to enforce mandatory dispute resolution clauses in commercial contracts and otherwise prioritize the settlement of disputes through dispute resolution techniques such as arbitration, mediation, conciliation and friendly negotiations.

17. QUALITY ENHANCEMENT OF OTHER STAKEHOLDERS, LAWYERS, POLICE AND MINISTERIAL STAFF

Statement and reasons: The efforts of working towards a better legal system cannot be achieved by merely tackling one side. The adversarial system itself generates and sustains the need for advocates and supporting staff. The administration of justice is based on the competent and hardworking lawyers' performance. It is also based on the competent and honest supporting staff. Hence it is essential that lawyers be better trained so that they are able to present all aspects of the case before the court in order to assist the court in reaching an appropriate decision on the merits of the matter. Similar requirement is applicable in respect of the staff too.

A lawyer should be well informed about the latest legal developments and should observe the values enunciated in the Bar Council Rules. These values are many, such as, (1) the value of competent representation, analyzing the ideals to which a lawyer should be committed as a member of a profession dedicated to the service of clients, (2) the value of striving to promote justice, fairness and morality; the ideals to which a lawyer should be committed as a member of a profession that bears special responsibilities for the quality of justice, (3) the value of striving to improve the profession;

explore the ideals to which a lawyer should be committed as a member of a 'self-governing' profession and (4) the value of professional self-development, analyzing the ideals to which the lawyer should be committed as a member of a 'learned profession'.

Further, the ministerial staffs who are employed in any establishment must be trained on the role they are to play. They must be trained about the concept of speedy justice, human rights etc.. Starting from filing of cases, putting up the same before the presiding officer, obtaining certified copies of orders and judgements, acceptance of bail bonds etc. are done through the ministerial staffs. If these works are completed by the staff in time by maintaining the transparency, then definitely, the system will be shining.

Suggestions: It is the need of the hour that the staffs working in the subordinate judiciary, lawyers in the bar and the police administration attached with the investigation of cases and execution of processes are trained to the effect that they are also part of justice delivery system and not merely the employees thereof, then definitely, access to justice in all aspects would be available to the stakeholders.

Further, the process of selection of the Government advocates in civil and criminal sides must be made more transparent. They must

be recruited through a formal selection process and not by way of selection through nomination from the bar. Comprehensive service rule may be framed by the state Government in this regard.

18. CURTAILMENT OF DELAY IN EXECUTION OF PROCESSES

Statement and reasons : It does not need any mention that police play a major role in the justice delivery system. Most of the cases come to the court through police authorities. The police are to apprehend an absconder, to serve the summons to accused persons or witnesses as the case may be. But, it is seen that in many cases due to fault of the police authorities the common people are far away from protection of their basic human rights. In 4275 cases[23] including sessions triable cases of sixteen districts in the state of Assam the police are yet to submit the Final Format to the court. If at all in those cases, charge-sheet is submitted then what would be the fate of those cases. Out of the listed witnesses, some may expire in the mean time, some may leave the given address, and some may become hostile. These are regular incidents of police system in the subordinate level.

Further, it is very often seen that the police authorities submits false or vague reports. If non-bailable warrant is issued for apprehension of an accused, without making any effort it is reported that he is not 'traceable'. If Bailable Warrant[24] is issued then the amount of bail bond noted in the warrant are taken by the executing officer from the warrantee as his pocket money. Similar is in the case of summons to witnesses. If the police authorities on whose prayer court proceed on trial of a cognizable offence submits false or vague reports, then how the court would be able to discharge its duties properly.

There is a general complaint that the Police has no sufficient time or force, to serve in time the summons on the witnesses and keep the under trial prisoners present in the Court, at the time of trial. There is a dire need that police discharge their statutory duties and meet the aspirations of general public without any bias. The openness of public enquires, a bit of transparency in the working, the confidence of the police department to expose itself for external scrutiny are factors that build trust among the people and begin the process of making the police accountable.

Suggestion: It is hereby suggested that since it is the subordinate courts where the police authorities use to appear on different counts, therefore, such courts can take appropriate steps for reformation on the police by holding regular meetings with them including training on the basic laws. Alternatively, the police authorities may also organize legal awareness camps on the practical problems in execution of the process with the Judicial Officers, advocates, village headmen, Village defence parties, representatives of the local self-governments so that the processes are executed in time.

19. INFORMATION TO THE VICITMS AS PER GUIDELINES OF NHRC[25]

Statement and reasons: There is no specific provision in the Code of Criminal Procedure towards completion of the process of investigation except for the offences punishable with imprisonment which may extend for a period of three years.[26] As a result of which, the victims or complainants as the case may be remain unaware about the fate of his First Information Report. His grievance may remain pending in the police stations for years together and he has nothing to do. Considering the above situation, the National Human Rights Commission framed some important

guidelines. The guidelines on police-public relations are of particular relevance to officers at the cutting edge level, that is those who are posted at police stations. These guidelines have been communicated to all chief secretaries and police chiefs. They are invaluable aid for police officers to perform their duties in a manner compatible with prevailing human rights standards. They are :

i. Registration of offences and information about progress in investigation

The Commission has stressed that complainants must have access to information about their cases. They have said that:

A First Information Report [FIR] should be registered promptly on receiving a complaint about a cognizable offence. A copy of the FIR should be given to the complainant and an entry about this should be made in the First Case Diary. If the complaint does not make out a cognizable offence, the police should explain to the complainant, the reasons why the complaint cannot be registered.

If investigation is not completed within three months of the FIR being registered, the complainant should be informed in writing giving specific reasons for the delay.

Proof of having informed the complainant [postal acknowledgement or written acknowledgement] about reasons for the delay in investigation should be kept on the Case Diary file.

If investigation is not completed within six months of registering the FIR, the complainant should be informed again in writing about the reasons for non completion of investigation, and the acknowledgement should be kept on the Case Diary file.

If the investigation is not completed within one year, a more detailed intimation. [memo] should be prepared by the investigating officer giving reasons for the delay to the complainant. The intimation should be endorsed by a gazetted officer who directly supervises the work of the investigating officer. The gazetted officer should personally verify the reasons for delay given by the investigating officer. A record of the intimation and its acknowledgement by the complainant should be kept on the Case Diary file.

The complainant should be informed once the investigation is completed and a charge-sheet is filed before the court. A copy of the charge-sheet should be given to the complainant by the police. In case the complainant is not available for some reason, her/his family should be informed.

Suggestion: Therefore, if the subordinate courts take into account the above guidelines, then they would be able to monitor the police administration for completing the investigation smoothly. Resultantly there would be less chance of biasness and human rights would be protected in its proper perspective. Further, the appropriate government must amend the existing provisions of law prescribing the time frame within which the investigation of a case must be

completed. Strict law must be enacted for punishment of the investigating officers who fail to complete the investigation in time.

20. BEST USE OF INFORMATION TECHNOLOGIES

Statement and reasons: In many occasions it is seen that due to fixing of large numbers of cases on a day and due to the regular works of the court like recording of evidences, hearing arguments, hearing of bail papers etc. it becomes late for the litigants in taking the next date of hearing. It also seems that due to different reasons such as un-spacious court room, crowd court room blockage by the security persons deployed in the courts the litigants cannot enter inside the court room for taking the next date of his or her case. Due to ignorance or otherwise, the litigants remain unaware about the orders passed in the proceedings in their own cases.

Apart from the above, it is natural that the government servants like the administrative officers, police officers, doctors and officers of the banks are transferred from one place to the other. However, their names appear in the case record as witnesses. The evidence of such officer is very much essential for deciding the dispute in hand. It becomes inconvenient on the part of the court to procure their attendance because the summons are not served in time because of

transfer from one place to the other. Sometimes, it also becomes inconvenient for such officers to appear before the court from far off places. As a result of which the disposal of cases are inadvertently delayed and the litigants' right to speedy trial gets violated.

Suggestion: It is suggested that necessary arrangements be made through computerization so that the next dates of the fixed cases and the brief orders passed therein are reflected in the computer system with a provision for easy access for the litigant public outside the court room. It would facilitate the litigants to note down the dates and the orders passed in his case. This will create a peaceful atmosphere in the court and easy information to those for whom the court is established.

Similarly, if evidence of the investigating Officers or Doctors or any other persons who are cited as witnesses of a case but stays somewhere else during the trial may be taken through video conferencing. If this facility is undertaken then naturally delay in deciding the cases would be curtailed. Further the Government Exchequer would also be preserved to a great extent.

21. HUMAN RIGHTS COURTS IN THE DISTRICTS MUST BE MADE WORKABLE

Statement and reasons: It is narrated in detail in the previous chapter that in view of Section 30 of the Protection of Human Rights Act, 1993, the District and Sessions Judges of all the judicial districts have been designated as the Human Rights Courts. 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. The term *'offences arising out of violation of human rights'* appearing in section 30 of the Act is an ambiguous and confusing 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.

Suggestion: Considering the fact that India is a social welfare country and it is the duty of the state to protect the human rights of the people living therein, the parliament of India must amend section 30 of the Protection of Human Rights Act, 1993 enumerating the powers and functions of the Human Rights Courts in detail. The amendment must consider the ambiguity in the section and thereupon shall include the procedure through which such court would take cognizance of any incident of violation of human rights and the remedies which could be provided thereon.

R E F E R E N C E S

a. Chapter-I pages- 1-21
b. Chapter-II pages- 22-34
c. Chapter-III pages- 35-43
d. Chapter-IV pages- 44-95
e. Chapter-V pages- 96-206
f. Chapter-VI-VII pages- 207-255

1. AIR1980 SC 1622.
2. MANU/SC/0132/1990 (AIR 1990 SC 709),
3. MANU/SC/0722/1995 : (1995) 4 SCC 262.
4. MANU/SC/0100/2005 (AIR 2005 SC 986),
5. As for instance, at Cachar, Dibrugarh officers are to share common lavatory
6. **Jeremy Bentham** (15 February,1748 – 6 June 1832) was a British philosopher, jurist, and social reformer. He is regarded as the founder of modern utilitarianism.
7. AIR 2000 SC 2017.
8. Letter No. HC.XXXV-12/2013/251/RTI dated 27th November, 2013 issued by The Dy. Registrar (Judl.)-cum- Asstt. PIO Gauhati High Court. Further, Information was also sought for from ten districts of Assam. Only the ld. 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.
9. The Victims of Crime Act,(VOCA) came into force in US in 1984.
10. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 was adopted by the United Nations General Assembly in 1985.
11. Ministry of Justice, Govt. of India notice dated 01-11-2013.
12. Reports collected through RTI from the Hon'ble Gauhati High Court.
13. AIR 2002, SC 1752.
13.a.. The Times of India, Guwahati/Northeast, April, 1, 2014 issue, page No.1.
14. Charge-sheet are delayed if the accused becomes absconder, if the police authorities are managed by political power, if the accused happens to be the relative of the police authorities and similar unjustified grounds.
15. As per section 173 (2) Cr.P.C. as soon as the investigation is completed, the investigating officer is to submit the report to the magistrate empowered to take cognizance of the offence. When the accusations in the F.I.R. is not proved the Investigating Officer submits a report commonly known as Final Report.
16. MANU/SC/0402/1999(JT 1999 (4) SC 537).
17. (2012) 1 SCC 10, MANU/SC/0425/2012.
18. Chapter- XX-A starting from section 265-A to 265-L of the Code of Criminal Procedure provides the modes and manners of disposing the cases on plea bargaining.

19. Section 320 of the Code of Criminal Procedure provides the modes and manners of disposing of cases through compromise

20. The Rule of Law Index 2012-2013 Report Published in 2012. The WJP's Rule of Law Index is a quantitative assessment tool designed to offer a detailed and comprehensive picture of the extent to which 97 countries and one jurisdiction around the world adhere to the rule of law. Authors Mark David Agrast, Juan Carlos Botero, Alejandro Ponce, Joel Martinez, and Christine S. Pratt.

20.a. Section 190(1)(c) of the Code of Criminal Procedure empowers the magistrates of first class to take cognizance of an offence on receipt of an information from any person other than a police officer or upon his own knowledge that such offence has been committed.

21. The Act came into force on 1997 providing in section 12 that any women, members of the S.C/S.T., juveniles, industrial workers, mentally disordered persons, members of jail or other institutions for detention, person having annual income less than 50,000/-, victims of natural calamities are entitled to free legal aid at the cost of the state

22. Annual report of the Hon'ble Gauhati High Court, 2012 page 75 .

23. As per report collected through RTI through the Police Headquarters of BONGAIGAON, DHEMAJI, GOLAGHAT, GOLAGHAT, DIBRUGARH, KARBI ANGLONG, KARBI ANGLONG, NALBARI, SONITPUR, SONITPUR, UDALGURI, JORHAT, DARRANG and KAMRUP (rural).

24. Bailable warrant means a warrant when the court directs the executing officer to release the person on his executing a bond for as specified amount ensuring his appearance before the court or the directed place.

25. NATIONAL HUMAN RIGHTS COMMISSION [NHRC] GUIDELINES ON POLICE -PUBLIC RELATIONS December 22, 1999

26. Section 468 of the Code of Criminal Procedure, 1973.

* * * * * * * * * * * *