

A B S T R A C T

**AN ANALYTICAL STUDY ON THE ROLE OF SUBORDINATE
JUDICIARY IN PROTECTING HUMAN RIGHTS**

(WITH SPECIAL REFERENCE TO THE STATE OF ASSAM)

**SUBMITTED FOR THE AWARD OF THE DEGREE OF
DOCTOR OF PHILOSOPHY IN THE FACULTY OF LAW OF
GAUHATI UNIVERSITY**



**Under the able guidance of
Dr. Subhram Rajkhowa
Professor, Department of Law
Gauhati University**

**Submitted by
Md. Mahmud Hussain Barbhuiya
Research Scholar
Gauhati University
2014**

CERTIFICATE

This is to certify that the thesis entitled 'An Analytical Study on the Role of Subordinate Judiciary in Protecting Human Rights with special reference to the state of Assam' prepared by Md. Mahmud Hussain Barbhuiya for the award of the degree of Doctor of Philosophy in Law in the Gauhati University is the result of his original investigation that has been carried out by him under my personal guidance and supervision.

I further certify that the candidate has fulfilled all the requirements under the Regulation for the award of the degree of Doctor of Philosophy, as laid down by the university. The thesis has not been submitted for any other degree or diploma to any other institutions.

Dated :

Prof. Subhram Rajkhowa
Department of Law
Gauhati University

A B S T R A C T

The principal three organs of the government namely the legislature, the executive and the judiciary have been discharging their respective constitutional duties. The legislature enacts the laws of the land, the executive executes the laws and the judiciary imparts justice to the people in accordance with the legal norms. In India, the Judiciary plays an important role towards achieving the constitutional goal, particularly, the social justice. The judiciary comprises within its ambit the supreme court of India to the top and the judicial magistrates to the bottom. The part of the judiciary exercising the jurisdiction within a district or districts or sub-divisions comprises the subordinate judiciary. In the field of delivering justice, the subordinate judiciary is not an exception to this holy mission. It plays a pivotal role towards providing security and protecting the rights and liberties of common people who are basically ignorant, down-trodden, under-privileged, backward and exploited. Articles 233 to 237 of the Constitution of India deal with the Subordinate Courts starting from the District and Sessions Judge to the Magistrates. Article 323-B deals with establishment of Tribunals etc. for adjudication of specified disputes.

The different types of courts established under the provisions of the Constitution of India and other relevant legislations are devoted

and committed for ensuring justice to the litigants who are victimized either by the state action or by individual action. Apart from the common category of courts such as District and Sessions Judge, Civil Judges and the Magistrates Courts in the district as well as sub-division level, some Special Courts and Tribunals namely the Industrial Tribunal, Motor Accident Claim tribunal, Foreigners Tribunal are also established so as to enable the common people to have easy and expeditious access to justice.

Most of the cases wherein the victims are sufferers in the hands of the state as defined in Article 12 of the Constitution of India approach the Hon'ble High Court concerned or the Supreme Court of India or the National or State Human Rights Commission, as the case may be, for getting redress. In the cases in between individuals, people seek resort to the Subordinate Judiciary. It is a place where live law is seen working. Herein, common people come for filing or defending the cases, for facing examination and or cross-examination as a witness, for hearing the open court judgment of acquittal or conviction, dismissal or allowing of a suit, allowing of divorce or rejection thereof, allowing or disallowing compensation to a retrenched worker or the *bonafide* customer and so on. Production of the accused after arrest by the police in genuine or false accusations, remand of the accused

to police custody or judicial custody, bail of the accused after hearing the counsel or *suo moto* are also found working in the subordinate judiciary.

All the judges including the judges of the subordinate judiciary has many noble duties. He is to scrutinize the pleadings, to note down the issues or points for determination, to record evidence, to hear argument and to pronounce judgement. Apart from the above normal duties, one of the most important functions of a judge is to conduct the proceeding in a fair, orderly and dignified manner. Finding the truth of contested issues of fact is the first concern of a judge. Based on facts ascertained, the judge is to apply the law and to give his decision on guilt or innocence, liability or immunity etc. in between the parties. For ensuring 'fairness' in truth ascertainment and minimizing subjectivity in the process, procedural law gives rights and privileges to litigants and witnesses. It is the function of the judge to give maximum protection to these rights and privileges to the parties so that justice is not only done but appears to have been done.

Although the judge is not a party to case and cannot interfere the parties in placing their cases before it, yet, in appropriate cases, the judge has to interfere. The judge can interfere if it is seen that

the interest of a party is affected due to wrong exposition of facts or law. The judge can also interfere if it is observed that the right of the accused or that of the witness or that of the victim is infringed deviating them from getting appropriate redress. The Hon'ble Supreme Court of India in the case of *Prithipal Singh etc. v. State Of Punjab & Ors. Reported in (2012) 1 SCC 10* in strong words held that the court cannot be a silent spectator where the stinking facts warrant interference in order to serve the interest of justice. In the fact-situation of a case, if the court remains oblivious to the patent facts on record, it would be tantamount to failure in performing its obligation under the law.

In brief, the objectives and functions of the judge while delivering justice is:

- (a) to ensure that all persons are able to live securely under the Rule of Law;
- (b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights ; and
- (c) to administer the law impartially among persons and between persons and state.

The criminal justice administration, as it stands today, basically concerned about the rights of the accused persons. The courts are concerned about the fact that the basic human rights of an accused either in police custody, in judicial custody and during trial are not prejudiced. Undoubtedly, the court is to see that an innocent is not detained or punished in any manner. But, at the same time, the fact that in genuine cases the accused persons who are before the court have also violated the rights of others. Unfortunately, in the absence of statutory powers the subordinate courts are not of much concerned about the rights of victims. As a result of which, the victims unless he or she filed a complaint case remain unaware about the progress of investigation as well as decision of the case. The victim who became vagrant at the hand of the culprits have no role to play and in this manner most of the cases end in acquittal of the accused. As on today, the investigation process is exclusively a police function and the victim has a role only if the police consider it necessary. Though it appears there are administrative instruction given by police department of certain States to give information on progress of investigation to the victims when asked for. Otherwise till police final report is filed and many times even thereafter the victim does not know what is happening to the case initiated by him or her.

Since statutorily, the victims have a very nominal role to play in the administration of criminal justice, many victims suffered a lot mentally, physically as well as economically. In genuine accusations also the accused gets clean-chit due to the poor performance of the negligent investigating agencies. Jurists, judges including people started thinking on the matter seriously. The concepts of 'victimology' and 'victims right' have started emerging. In the case *George Muthoot v. State of Kerala* reported in *MANU/ KE/ 0169/20100* while dealing the role and rights of the victim of crimes the Hon'ble Kerala high Court observed in para 32: "*Though we find that as victims of crime are important players in criminal justice administration both as complainant/informant and as a witness, it is unfortunate that despite the system being heavily dependent on the victim, criminal justice has been concerned only with the offender and his interest almost subordinating or disregarding the interests of victim.*"

Human Rights, in its broader sense, implies the natural rights which are inherent to a human being for leading a dignified life. These rights are inalienable in view of the fact that the holder of these rights cannot divest himself of them. These rights are neither derived from the society nor conferred upon the individual by the society. They are independent of any 'legal system', 'philosophy' or 'ism'. The human

rights were tried to be codified in the Universal Declaration of Human Rights, 1948 and two international Covenants namely the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966 which are popularly known as International Bill of Human Rights. Besides, some other Conventions, Declarations, Protocols have also been resolved by the international community nationally, regionally and globally to enlarge its scope, and, everyday the scope is changing with the need of the hour covering many new aspects within the ambit of the term 'human rights'. Human rights also connotes amongst others, rights relating to life, liberty, equality and dignity of a human being. It includes right to speedy trial, right against arbitrary arrest and detention, right against torture, right to free legal aid, right against unnecessary handcuffing, right to humane living in the detention places, right to know, right of the women for camera trial, right of the juveniles to be treated separately. Each of these phrase have, again, wider meaning and particularly while added with the term 'human rights' they become more elastic and give rise to several dimensions. These also include right to have access to justice by all irrespective of rich or poor, haves or haves not, ruler or the ruled.

Article 51(c) of the Constitution of India provides that *the state shall endeavor to foster respect for international law and treaty obligations in the dealing of organized people with another*. Although this is not a substantive law, yet, nonetheless, it is a commitment that India will respect the international law. As stated above, the concept of human rights have been emerging with the change of time, and accordingly, human rights treaties and conventions are also resolved by the international community. There may be certain rights which are enumerated in the international human rights treaties but are not available to the people, citizen in particular of our country. In such a situation, also the Hon'ble Supreme Court of India played significant role. The court had developed the doctrine of interpretation according to which rules of international law and municipal law should be construed harmoniously. The Supreme Court repeatedly held that in interpreting the fundamental rights provisions of the constitution, that courts can rely on those provisions of the International Covenant on Civil and Political Rights, 1966 that elucidate and to effectuate the constitutional fundamental rights.

Thousands of people are to come to the court to assist the justice delivery system towards conclusion of the pleadings advanced

by the contesting parties. These people are comprised of the petitioner or the Opposite party, the complainant or the complained, general witness or expert, Medical Officer or Police Officer and so on. How far these people in their respective capacity are aware of their human rights which they are entitled to avail in the court during the proceeding and how far the courts of law are trying to protect their human rights is a subject of concern in the modern human rights regime.

In accordance with the scheme of the Protection of Human Rights Act, 1993, the National Human Rights Commission at the center and some state Human Rights Commissions have been established in the states and they are discharging their functions as provided under the Act. Although there is provision for designating or establishing Human Right Court in the district but shockingly due to non-defining the powers and functions of such court nobody is knocking the door of such court and till date the ambiguities in the Act has not been clarified. As understood, the common people think that it is only those Commissions who have their power to protect human rights of the common people. But, in fact, the Hon'ble Supreme Court of India, the Hon'ble High Courts and other Courts Subordinate thereto are also empowered to protect the human rights

of the common people.

During the investigation, it is seen that in spite of best efforts by the judicial officers of the subordinate judiciary, the human rights of the common people and litigants in particular could not be protected as per expectations. This is so because of several problems such as less numbers of judges comparing to the rise of cases, deficiency of infrastructure, inadequate sensitization programme among the judicial officers, lack of transparent selection process and training of the prosecutors, lack of training of ministerial staff and advocates, lack of awareness among the mass, corruption, undefined power of the human rights courts, concept of victimology is not well defined, non-active role of the government in matters of victimology, lack of witness protection programme, faulty investigation including vague medical reports, little role of courts in matter under investigations.

To come over the problems in order to protect the human rights better, suggestion have been put forward for suitable legislations, rule making and policy decisions by the central and state government as well as the authorities concerned in the fields. The suggestions are that the court must be sensitive, that the court must innovate, that atmosphere of the court must be improved, that there is need for

protection of witness, that there is need to provide diet money to witness, that the concept of victimology must be adopted in the system, that the numbers of the judges must be strengthen, that curtailable adjournments should be curtailed, that there must be direction for further investigation in appropriate cases, that the intervener may be allowed to participate in trial, that the judges be encouraged towards alternative dispute resolution, that the government must improve the existing poor budgetary support, that there must be access to justice by way of judicial activism, the system be adaptable with globalization, that there must be transparency and accountability in the process of adjudication, quality enhancement of the stakeholders, lawyers, police and ministerial staff, there must be checks so as to curtail delay in execution of processes, information to the victims as per guidelines of the national Human rights Commission, best use of information technologies and human rights court in the districts must be made workable.

(Md. Mahmud Hussain Barbhuiya)