Preface

Social justice is the ideal that leads to the ultimate fulfillment and achievement of justice and the prevalence of harmony in society. Its importance and utility was realised even in the past, but there is now an increased attention and focused interest about the relevance of the ideal in the present age which has prompted me to take it up as a subject of serious exploration. Without social justice man’s existence on this earth becomes meaningless. A nation or society cannot be free and embark on the path of true progress unless it is free from basic wants and needs. A populous country such as India is inhabited by people from different races and castes and as well from various economic and social strata and this creates an imbalance in the ultimate realisation of man’s wants and dreams. To maintain equilibrium in society and to help each member realise or achieve his needs is the ultimate aim of social justice. Social justice is the justice for the indigent, the oppressed and the subjugated. When social justice is realised for this section of people in the society then the nation as a whole and the society in particular would be considered a developed and progressive one. But when it falls short of its goals then the entire nation is doomed.

The subject of social justice is of great importance and value in a poor country like India. Although it has been predicted by knowledgeable persons that by
2025 India would become a major economy, there is room for doubt, skepticism and introspection because a perfect picture of rendering social justice to the really needy has not yet emerged. All talk of growth and empowerment can become meaningless in the light of this realisation. The framers of our Constitution were aware of the ground realities of the country and thus made social justice one of the main mottos of our Constitution. Since the last 60 years or so of Independence many steps have been taken to meet the needs and claims of the vulnerable sections but much remains to be done. The legislature by passing laws on social justice might not have been as successful as it was desired and hoped. Even while executing modest goals the administration finds that there are loopholes in its instruments and policies. So there is a great dissatisfaction over the functioning of the legislative and the executive to deliver effective governance to meet the needs and challenges of the time. The judiciary as a custodian of the Constitution has at least tried to live according to the expectations of the people.

The concept of social justice is a wide and a varied topic. This thesis primarily relates judiciary’s role in the disbursing of social justice through property rights and reservation which is the current debatable topic. The judiciary maintained a status quo with regard to the land reforms legislation. So there was a tussle between the judiciary and the legislature over the implementation of different reforms. To get over this the legislature enacted different amendments that is i.e.
first, fourth, seventeenth, twenty-fifth, forty-second and forty fourth amendments. Ultimately the basic structure doctrine set at rest many doubts and intricate conflicts that arose between the legislature and the judiciary. The judiciary’s policy of following the status quo in its initial years might be due to the fact that they were under the Anglo Saxon influence. However, this changed during the course of years and the judiciary’s role in trying to achieve social justice with regard to reservation became laudable. It had tried its best to bring social engineering into the framework of social justice through its different interpretations. In delivering different verdicts the judiciary has tried to maintain the balance between the general category of people and the reserved class. The judiciary cannot be said to be a flawless institution. As ills and lacunae are prevalent in any governmental institution so the judiciary as an institution also suffers from certain defects and deficiencies. There is an urgent need to rectify the shortcomings of the judiciary. Public consciousness and needs want the judiciary to be brought within the purview of the Right to Information Act of 2005. Social justice is a topic that encompasses the past, present and future of India. Therefore there is an urgent need to look at the subject of social justice afresh and this is what I have tried to do in this study.

In giving due thanks, first of all I must acknowledge my debt of gratitude to my research guide Dr. Bhaskar Kr. Chakravarty, B.Sc. (Hons.), LL.M., Ph.D., Head of the Department, Law, Dean, Faculty of Law, Gauhati University. Despite his busy
schedule as Head of the Department he spared time for me and gave me valuable suggestions and set me on the right direction on more than one occasion. My sincere gratitude is due also to Dr. (Mrs.) Srutidhara Chakravarty, M.A., Ph.D., Reader, Department of Sanskrit, Gauhati University, who extended smiling hospitality to me when I frequented her residence to meet ‘Sir’ (Dr. Bhaskar Kr. Chakravarty) for help during the writing of this thesis.

I take this occasion to thank my father Sri Pramod Chandra Barman, who was one of the original inspirers of this study as he gave me many ideas and insights in this field. I also thank my elder brother Prasanta Kr. Barman, Advocate, High Court of Assam, who generously made available his personal library to me and also provided support in many other ways. Special thanks are due to my husband Dr. Pradipta Borgohain who helped me with revising the thesis and in formatting it and in other related matters. I also thank my father-in-law Homen Borgohain and my mother-in-law Nirupama Borgohain for their warm support during the difficult period of conducting research and writing. I must specially mention my mother Basanti Barman who must take the credit for all the good things that have happened to me and her presence and support was invaluable during the writing of this thesis. I should not forget my daughter Arunita Borgohain (Poopi) who had to patiently bear with the neglect to which she was inevitably subjected due to my pre-occupation with this project.
I am highly indebted to the librarians and staff members of the following institutes: K.K. Handique Central Library, Gauhati University Law College Library, Indian Law Institute of New Delhi, the Law Department Library (especially Rama Kakati), Administrative Staff College, Khanapara (especially Nandita Hazarika, A.C.S.) and the Omeo Kumar Das Institute of Social Change.

I also thank my colleagues in the University Law College for constantly encouraging me during this time. Finally I thank Mr. Malik of Gauhati High Court for typing the majority of this thesis.