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Supporting Documents For NAAC

Self Study Report (SSR)

Period : 2017-18 to 2021-22

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Criteria-3

Research, Innovations and Extension

Key Indicator 3.3

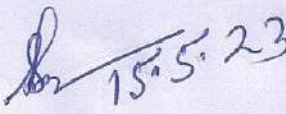
(Research Publications and Awards)

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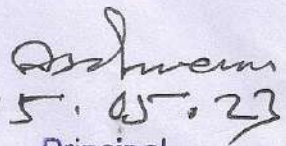
Number of research papers published per teacher in the journals notified on UGC care list during the last five years

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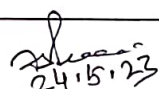

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3.3.1 Number of research papers published per teacher in the Journals notified on UGC website during the last five year

Title of Paper	Name of the author/s	Department of the teacher	Name of Journal	Year of publication	ISSN number	Link to website of the Journal	Link to article / paper/ abstract to the article is it listed In UGC Care list
A Critical analysis on judicial accountability of subordinate courts in India	Jalal Uddin	Philosophy	Journal of the Asiatic Society of Mumbai, Vol - 96, No. 07(II)	2022	ISSN :- 0972-0766		UGC - CARE List Group I, Impact factor :3.947,
Festivals of Select Tribes in Assam : A Critical Study (Assamer Nirbachito Jonojatir Utsav Anusthan - Ekti Bisleshatthok Prothibedon)	Dr. Sarbajit Das	Bengali	Creacrit , Vol-8, Issue - 2 Nagaon , Assam	2021	ISSN - 2347-8829		
Socio-cultural & Educational Background of people of the North Eastern States	Abdulla Hussain Laskar	Philosophy	EDUSEARCH (A peer reviewed Bi- lingual Multi Disciplinary National Level Annual Research Journal, Vol - 6	2020	ISSN - 2395-7298		


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Asomer Procholito Bangla Prabad : Samaj Saltyer Sandhane	Dr. Sarbajit Das	Bengali	SRISTI , vol- 10, Women Cell, Lumding College , Assam	2020	ISSN -2277-6540	
Professional ethics of teachers	Md. Azir Uddin	Political Science	Edu. Search Vol -6	2020	ISSN - 2395- 7298	
Assamese Mind and Life as Reflected in Agricultured-Centric Culture and Institution of Assam	Dr. Sarbajit Das	Bengali	Creatcrit , Vol-7, Issue – 2 Nagaon , Assam	2020	ISSN – 2347- 8829	
Shshu Sahityik Upendra Kishor	Dr. Anirvana Datta	Bengali	SWOPNO Vol- 27, Issue 1-2 Lumding , Assam	2020	ISSN - 0976- 9676	
A Study on Mosques and Dargahs in Barak Valley : The myth and reality with special reference to customary laws.	Dr Dilwar Hussain Talukdar	History	IMPACT : International Journal of Research in Humanities, Arts and Literature (IMPACT:JRHAL)	2019	ISSN (P) 2347- 4564: ISSN (E) ; 2321-8878	UGC Approved No. 40893
Badsha in the Folk life of Barak Valley	Dr. Sarbajit Das	Bengali	Nagaon , Assam	2019	ISSN – 2347- 8829	

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Propagation of Social Harmony in Barak Valley by Sufi Personalities	Dr Dilwar Hussain Talukdar	History	Pratidhwani the Echo, Impact Factor 6.28. Vol- 6, Issue - III	2018	e-ISSN 2278-5264, P-2321-9319		
Nazrul Sahitye Pratibad Prabanata O Saimyo Vabna	Dr. Sarbajit Das	Bengali	SWOPNO , Vol- 25, Issue - 2, Lumding, Assam	2018	ISSN - 0976-9676		

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Creatcrit

A Peer-Reviewed Research Journal
VOLUME-8 • ISSUE-2 • JULY-2021



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16
Year of start : 2014
ISSN : 2347-8829

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Index No.-5139
PIF(I2OR)-4.424

Creatcrit

*An Interdisciplinary (Arts & Humanities) and
Multilingual (Assamese, Bengali, English) Peer-Reviewed
Research Journal published every January and July.*

Vol.-8, No.2, July, 2021

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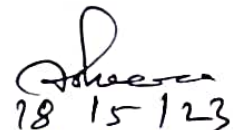
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Creatcrit : ISSN 2347-8829
Vol.-8 No.-2, July, 2021
PP 86-98

Festivals of Select Tribes in Assam: A Critical Study

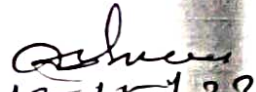
Sarbajit Das
Assistant Professor, Department of Bengali, Nilambazar
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(sarbajit.pipon@gmail.com)

Abstract: Assam is the meeting ground of different tribes. However each tribe has its own culture, own way of life and each construct its relation with the environment. All these cultures have given shape to Assamese culture. There is a unity of culture in diversity. Hopes and desires, fears and anxieties, hatred and love are innate in a human being. Man always aspires to rise high, he aspires to realise his goals. Seeking help from a Super Power he embarks upon the path of waterising his life goals. Moreover, to overcome the drugery of life he seeks an outlet through merry making in his association with community life. Therefore, he has vised many systems, one of which is celebrating religious festivals and rituals. So, there is a psychological factor working behind holding worships and organising festivals. The aim of this paper is to explore working of Psychology of the members of society, as an individual and also as a member of the community, behind performing rituals and celebrating festivals. The study will be based on ethrographic study.

Key-words: tribes, festivals, psychology, rituals, community

“আসামের নির্বাচিত জনজাতির উৎসব-অনুষ্ঠান:
একটি বিশ্লেষণাত্মক প্রতিবেদন”

বিশ্বব্রহ্মাণ্ডের সৃষ্টি ও বিচিত্র লীলা-খেলা নিয়ে মানুষের কৌতূহলের অন্ত নেই।
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ISSN 2395-7298

EDUSEARCH

A Peer Reviewed Bilingual Multi Disciplinary National Level Annual Research Journal

Volume-6, January 2020



Research & Development Cell
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EDUSEARCH

ISSN 2395-7298

A Peer Reviewed Bi-lingual Multi Disciplinary National Level
Annual Research Journal

Volume-VI, January 2020

Publisher

Research & Development Cell
Nabinchandra College, Badarpur
Assam - 788806

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Nabinchandra College, Badarpur
P.O. - Badarpur, Dist. - Karimganj
Pin. - 788806 (Assam)
Phone No. - 03843-268153
E-mail : edusearchncc@gmail.com
Website : www.nccollege.org.in

Price : Two hundred rupees only

Printed at : National Offset Printers, S.T. Road, Badarpur, (M) 7002183407

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EDUSEARCH

ISSN 2395-7298

Vol-VI, January-2020

A Peer Reviewed Bi-lingual Multi-Disciplinary National Level Annual Research Journal

Published by, Research & Development Cell, Nabinchandra College, Badarpur, Karimganj, Assam-788806

Socio-Cultural & Educational Background of People of the North Eastern States

Abdullah Hussain Laskar
Asstt. Prof. Dept. of Philosophy
Nilambazar College, Nilambazar

North East India, one of the most beautiful regions of India, also known as the "Seven Sisters" includes Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura states. It is connected to the rest of the country by a narrow stretch of land between Bhutan and Bangladesh and surrounded by extremely sensitive frontier with Chinese occupied Tibet and a 1600 Km long border with Myanmar. Some historians maintain that India has always been a cultural and economic entity and the North East has always been an integral part of India. There is also a school of thought which maintains that the population of North East Asia has greater affinity with the people of South East Asia than with those from the rest of India. The political and cultural isolation of the Seven Sisters has spawned these observations; perhaps, it is because of such divergent views and the prevailing situation that it is not very common to hear the Indian leaders emphasising the importance of early integration of the people of the North East into the national mainstream.

The North East is a magnificent and tragic tapestry of people, events and nature. We can be touched by its rivers, rain and mist, overwhelmed by the seeming gentleness of its people and stirred by its powerful and evocative history. There are not less than 220 ethnic tribes in NE States with population of about forty million people. There are communities with kin in the neighboring countries.

There are crucial and complex problems that have defied solution for as long as independent India has existed. The population is about three percent of the national figure. It's people are an anthropologist's delight and an administrator's nightmare. A settlement in a state that

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Volume 10

August, 2020

ISSN.No.2277-6540

Shristi

A peer Reviewed Journal of Women Cell, Lumding College Unit

Shree
18 15 123
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A Peer Reviewed Journal of the Women Cell Luming College Unit
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ISSN 2277-6540

Cover: Editorial Board, Shristi

Published by Women Cell, Luming College Unit, Luming-782 447, Phone: 03674-26364
Fax: 03674-263375, Website :www.lumingcollege.org

Printed at Rani Publication, Luming

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P.O. Nilambazar, Dist. Karimganj

ISSN 2277-6540



A PEER REVIEWED JOURNAL
OF

THE WOMEN CELL, LUMDING COLLEGE UNIT

Vol.10

August 2020

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অসমে প্রচলিত বাংলা প্রবাদ : সমাজ সত্যের সন্ধান

ড° সবজিৎ দাস, সহকারী অধ্যাপক, বাংলা বিভাগ, নিলাম বাজার কলেজ

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কী-শব্দ : গার্হস্থ্য জীবন, শাওড়ি-বউ সম্পর্ক, পুরুষত্বের নারী, মৌকি ধার্মিক, জাতপাত, দ্বন্দ্ব-প্রতিবাদ।

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স্বল্প অবয়বে দীর্ঘ অভিজ্ঞতার বাস্তব প্রকাশকে প্রবাদ বলা হয়। সুদূর স্মরণীয় কাল থেকে এ পর্যন্ত হাটে-মাঠে-ঘাটে-ঘাটে কবচানে চলেছে এর সৃজন ও প্রয়োগ প্রয়াস। প্রবাদ প্রযুক্ত হয় জীবনের সবক্ষেত্রে, সব পাত্রে, সব কালে, সব মালে, সব হালে, সব চালে। মানুষের জীবনকে কেন্দ্র করে বিস্তৃত যে প্রয়োজনের পরিধি - ঘর সংসার, সমাজ দেশ, সবকিছু মিলিয়ে যে বিশ্ববোধ, তার মধ্যে জ্ঞানের বিস্তৃত পরিধি বা পরিসর - প্রবাদের মধ্যে সেসবের অভিযুক্তি ঘটে। প্রবাদ একটি সর্বাঙ্গীর্ণ কিন্তু পূর্ণাঙ্গ বাক্য। তাতে নিহিত থাকে প্রজন্ম বাহিত মানুষের বাস্তব অভিজ্ঞতা। থাকে বুদ্ধি বা চিন্তার ছাপ। বাচ্যার্থ নয়, ব্যঞ্জনার্থই প্রবাদের মূল অর্থ। এগুলোর স্বাধীন সত্তা থাকে কিন্তু স্বাধীন প্রয়োগ নেই। ঐতিহ্য থেকে রস সঞ্চয় করে প্রবাদ অর্থপূর্ণ হয় এবং ভাষার মধ্যে বহমান থেকে তাকে প্রাপকত্ব করে তোলে।

প্রবাদে রচয়িতার নাম থাকে না। ব্যক্তির দ্বারা সৃষ্ট হয়ে তা ব্যক্তিতে সীমাবদ্ধ না থেকে হয়ে উঠে সকলের। প্রবাদের উৎস কাল নিজে মত বিভেদ দেখা যায়। তা একদা কৃষিপ্রধান সমাজে বহুল পরিচিতি লাভ করেছিল বলে অনেকে মনে করেন। তবে আধুনিক লোকবিজ্ঞানীদের মতে “আদিম অবস্থা (Primitive Phase) পার হয়ে মানুষ যখন দলপতির তত্ত্বাবধানে (Savage Phase) জীবন নির্বাহ শুরু করে, তখন থেকেই প্রবাদের ব্যবহার চলে আসছে।” বস্তুত প্রবাদের সৃষ্টি যে কালে বা যেভাবে হোক না কেন, তার আধার সমাজ। প্রবাদ লোকসাহিত্যের একটি বিশেষ ধারা। সাহিত্যের প্রধান শর্ত সমাজ সচেতনতা। তাই প্রবাদের অন্তরালে সমাজের বিভিন্ন চিত্র প্রচ্ছন্ন থাকার কথা। কেননা প্রবাদ সামাজিক মানুষের প্রাত্যহিক জীবন-অভিজ্ঞতা ও প্রাজ্ঞ মনস্কতার স্বর্ণফল। “মানুষের প্রাত্যহিক বিচিত্র অভিজ্ঞতা ও উপলব্ধির মর্ম নির্যাস সঞ্চিত হয় যেসব সুসংগঠিত সরল অথচ বৈদম্ব্যভরা ঐতিহ্যবাহী উক্তিগুলির মধ্যে, তারাই হল প্রবাদ।” সামাজিক মানুষের জগৎ ও জীবন সম্পর্কে লব্ধ জ্ঞান প্রবাদ সৃষ্টির নেপথ্য তাগিদ। মনে রাখা দরকার যে, মানব জীবনের সর্বাধিক গুরুত্বপূর্ণ বৈশিষ্ট্য হল এর সামাজিক চরিত্র। সৃষ্টিব্রহ্মের তাগিদে মানুষ পরম্পরের সঙ্গে ক্রিয়া প্রতিক্রিয়ার ভিত্তিতে জীবন যাপন করতে বাধ্য হয়। বাস করতে হয় সমাজের মধ্যে, শ্রুতি ও প্রয়োজনীয়তার পরিপ্রেক্ষিতে। প্রাকৃতিক উপাদানগুলো অনুধাবনের জন্য মানুষ যেমন আত্মনিয়োগ করেছে, তেমনি সমাজ ও সামাজিক পরিবেশ সম্পর্কে সেগুলোকে চিন্তাভাবনার মধ্যে আনার জন্য সচেতন থেকেছে। মানুষের এই সচেতনতার অভিব্যক্তি প্রবাদের মধ্যে সৃষ্ট হয়। প্রবাদের প্রচলন বিশ্বের সর্বত্র আছে। তাই প্রবাদকে বলা হয় সর্বজনীন শিল্প। প্রবাদের দৈহিক কাঠামোগত দিক দিয়ে তথা অর্থব্যঞ্জনা, ব্যবহারিক উপযোগিতা, উপস্থাপনের ভঙ্গি প্রায় সর্বত্র এক। তবে সামাজিক-অর্থনৈতিক-ভৌগোলিক-নৃতাত্ত্বিক ইত্যাদির স্বকীয় অবস্থার কারণে প্রবাদের বিষয়বস্তুর ভিন্নতা লক্ষ করা যায়। বাস্তবজীবনের সঙ্গে মোকাবিলার প্রেক্ষাপট সকলের সমরূপ হয় না। ফলে প্রবাদের বিশ্বজনীন চারিত্রিক লক্ষণ থাকা সত্ত্বেও এগুলোর একটি স্থানিক পরিচিতি থাকার কথা। অসমের বাংলা প্রবাদ প্রসঙ্গে আলোচনা করতে গিয়ে উক্ত কথা উপলব্ধ হয়। অসমের বাংলা প্রবাদের প্রচলন অন্যত্র বিরল, তা বলা অনুচিত।

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ISSN 2395-7298

EDUSEARCH

A Peer Reviewed Bi-lingual Multi Disciplinary National Level
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Volume-6, January 2020



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ISSN 2395-7298

A Peer Reviewed Bi-lingual Multi Disciplinary National Level
Annual Research Journal

Volume-VI, January 2020

Publisher

Research & Development Cell
Nabinchandra College, Badarpur
Assam - 788806

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Convener, Research & Development Cell
Nabinchandra College, Badarpur
P.O. - Badarpur, Dist. - Karimganj
Pin. - 788806 (Assam)
Phone No. - 03843-268153
E-mail : edusearchncc@gmail.com
Website : www.nccollege.org.in

Price : Two hundred rupees only

Printed at : National Offset Printers, S.T. Road, Badarpur, (M) 7002183407

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EDUSEARCH ISSN 2395-7298

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EDUSEARCH

ISSN 2395-7298

Vol-VI, January-2020

A Peer Reviewed Bi-lingual Multi-Disciplinary National Level Annual Research Journal

Published by, Research & Development Cell, Nabinchandra College, Badarpur, Karimganj, Assam-788806

Professional Ethics of Teachers

Azir Uddin

Asstt. Prof. (P.Sc.)

Nilambazar College, Nilambazar

The teacher 'has been recognized as a key person in the preservation, progression and projection of a nation's cultural heritage. Teacher is one through whom the new generation is prepared to lead a good life in the social environment. Teachers are required to teach. But for them the main question is not what to teach but what for to teach. The what for is answered in terms of the individual growth; 'social progress, national development and international goodwill. The teachers have to play a very vital role in any society or community. Because of their role in social and individual upliftment that the teachers are referred to as professionals and teaching as a profession.

A profession may be defined as an occupation which requires specialised knowledge or advanced learning. A professional is one who is able to acquire a fund of knowledge, range of skills and their application in the service of humanity. The dictionary meanings of professional are belonging to a profession, showing the skill of a trained person, doing specified work etc., for payment, not as a pastime. The teacher is considered a professional because he has been trained to teach and has acquired teaching skills. As a professional the teacher is required to observe certain code of conduct or norms of behavior. This means that his behavior pattern must be governed by ethical consideration. Before we describe what, we mean by ethical consideration let us think about the main characteristics of a profession.

CHARACTERISTICS OF A PROFESSION

The following are some of the main characteristics of a profession:

1. A profession is one the practitioners of which possess a body of

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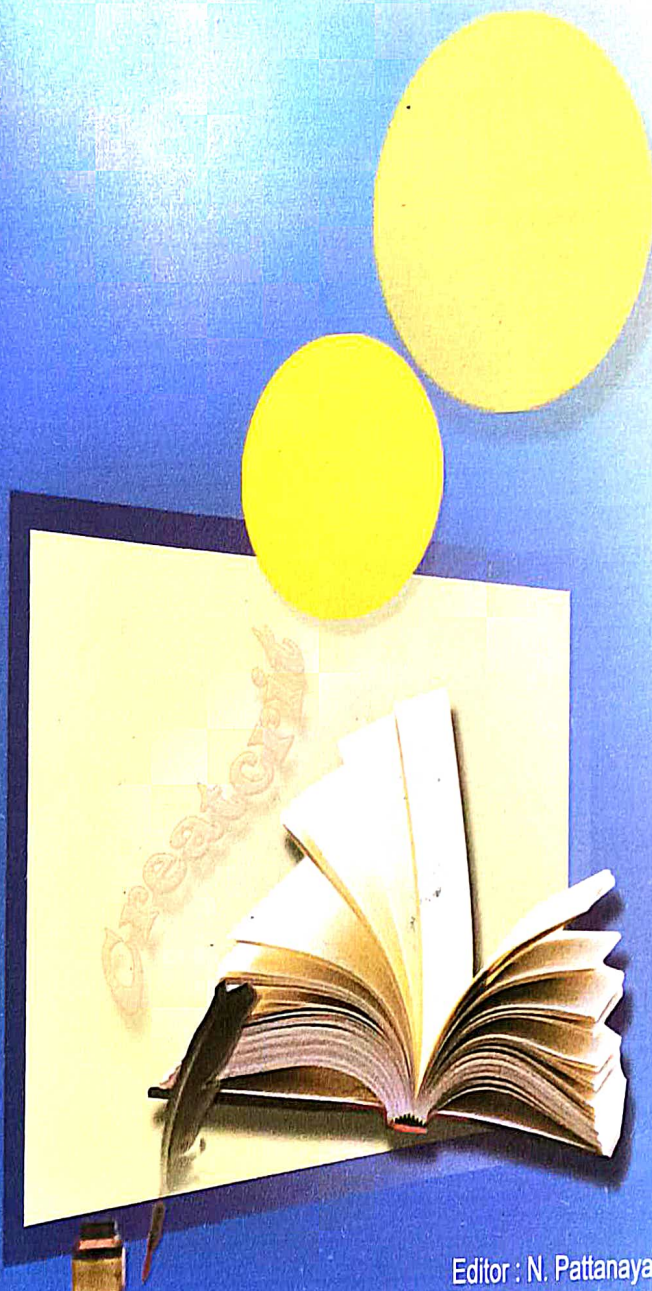


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A Peer-Reviewed Journal
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14
Year of start : 2014
ISSN : 2347-8829

www.creatcrit.co
Index No. - 5139
PIF(I2OR) - 3.565

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*A multidisciplinary (Arts & Humanities) and
multilingual (Assamese, Bengali, English) Peer-reviewed
Journal published in every January and July.
Vol.-7, No.-2, July, 2020*



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Publisher : Dr. N. Pattanayak

Cover Design : Prasanta Kr. Gogoi

Layout : Jatin Saikia

Printing : Ajanta Press, M.G Road, Nagaon -1


Editorial Office : Creatcrit C/O- Dr. N. Pattanayak, Gandhinagar, L.K. Road, Haibargaon, Nagaon, Assam, India. Pin- 782002

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Creatcrit : ISSN 2347-8829
Vol.-7 No.-2, July, 2020
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Assamese Mind and Life as Reflected in Agricultured- Centric Culture and Institutions of Assam

Sarbajit Das

Asst. Prof., Deptt. of Bengali
Nilambazar College, Nilambazar, Karimganj

Abstract : *In the progress of human civilization, cultivation of land played in important role. It helped human race in its journey from a nomadic life to a settled life, and with this life encouraged man to contribute towards growth of human civilization and enrichment of culture. In the primary stage of this revolution man and enrichment of culture. In the primary stage of this revolence man depended heavily on nature and imagined the existence of an omniscient, omnipotent power for its benevolence to mankind. For the appeasement of this benevolent, omniscient and omnipotent power, man devised a number of modes of worship that ultimately gave rise to vituals, festivals etc. associated with agriculture. A majority people of northern Bengal take up agriculture as the main source of their livelihood. Expecting rich harvest they take up various kinds of rituals and celebrate a number of festivals which, in turn, have enriched human society and human culture. The paper aims at presenting this folk culture of the Assam.*

Key words : *Agriculture, human civilization, land, rituals, festivals.*

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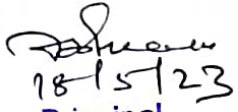


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অনিবারণ দত্ত

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পাঠক হিসেবে আমরা জানি যে শিশু ও কিশোরের জন্য লেখা সাহিত্যের ভ্রূগৎ আলাদা। সাহিত্যিকরাও এই স্বাভাবিকতা বজায় রেখেই খুবই সচেতনভাবেই শিশু-কিশোরসাহিত্য রচনায় ব্রতী হন। সাহিত্যিক বিভাগের বিচারে আমাদের বাংলা সাহিত্যে শিশু-কিশোরসাহিত্য সবই প্রচলিত ও প্রতিষ্ঠিত হয়ে গেছে শিশু-সাহিত্য রূপেই। প্রাক-লগ্ন থেকেই আমরা ছোটদের সাহিত্য বা কিশোর সাহিত্যকে একই বিচার করে চলে আসছি।

বাংলা সাহিত্যে ভুবনে শিশুসাহিত্যের স্বরূপ ও সংজ্ঞা প্রসঙ্গে বিভিন্ন মতামত প্রচলিত আছে। বাংলা শিশু-কিশোর সাহিত্যের প্রবাদপুরুষ উপেন্দ্রকিশোর রায়চৌধুরীর চিন্তাধারা এপ্রসঙ্গে খুবই স্পষ্ট। শিশুসাহিত্যের সমালোচক লীলা মজুমদার উপেন্দ্রকিশোর রায়চৌধুরীর এই চিন্তাধারাকে পরিচয় দিতে গিয়ে বলেছেন যে তিনি আন্তরিকভাবে বিশ্বাস করতেন ছোটদের বই হবে সবচেয়ে ভালো বিষয়ে লেখা। সবচেয়ে ভালো কাগজের ছাপা, সবচেয়ে সুন্দর ছবি ও অলঙ্করণ নিয়ে সাজানো এবং সবচেয়ে ভালো লেখা দিয়ে পুষ্ট।

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UGC Approved No: 40893

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In recognition of the publication of the paper
(Paper ID: JRRHALMAR201901) entitled

A Study on Mosques and Dargahs in Barak Valley: The Myth and
Reality With Special Reference to Customary Laws

Published in IMPACT : JRRHAL Journal,

Volume 7, Issue 3, Mar- 2019

Managing Editor

Attested
Principal

31-03-2019

Date

Nilambazar College,
Nilambazar Dist-Karimganj



A STUDY ON MOSQUES AND DARGAHS IN BARAK VALLEY: THE MYTH AND REALITY WITH SPECIAL REFERENCE TO CUSTOMARY LAWS

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Received: 21 Feb 2019

Accepted: 26 Feb 2019

Published: 08 Mar 2019

ABSTRACT

In North East India, a varied number of tribes and non-tribes live. They have their own distinct cultures, own social customs, religious beliefs, own languages, own traditional dress, complexes, and social trends. The history of Muslims of Barak Valley is important for a comprehensive history of Assam. From the ancient times, Muslims believe that Mosques and Dargahs as religious institutions and the customary laws play an important role in Mosques and Dargahs of Barak Valley. Customary law is not a judicial law but it is also an art of society and local administration. The present study attempts to understand the religious institutions in the Barak Valley is a simple Islamic doctrine of peace, equality, fraternity, and common brotherhood and their disciples demonstrated in public and practiced in their social life. Mosques and Dargahs are religious institutions and customary to man and materials to accomplish a purpose. As we know, when people live together, social problems arise in society. The activities of man in society are to be properly organized and managed. Without proper organization and management, it would become difficult for men to live together. Mosques and Dargahs are therefore a necessary activity of religious human grouping. It is called the technology of social relationships. It involves customary law and rational organization of man and material. The administrative framework of Mosques and Dargahs of Barak Valley is based on democratic principles. The administration runs by the involvement of the concerned committee on democratic setup. Every Mosques and Dargahs has a managing committee to look after all affairs of the institutions. The committee headed by a President and a Secretary to look after all the required affairs for the development and smooth functioning of the administration.

KEYWORDS: Mosque, Dargah, Barak Valley, Muslim, Managing Committee, Customary Law

INTRODUCTION

Assam is geographically divided into three parts: (i) Brahmaputra Valley (ii) Barak Valley (iii) Hilly region comprising two districts of Borail Range. The Barak Valley is known as south Assam, located in the southern region of the Indian state of Assam. The region is named after the Barak River. It consists of three administrative districts of Assam viz-

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Cachar, Karimganj and Hailakandi.⁴ Concerning the historical background of Barak Valley, the great Sufi Saint Shah Jalal Mujarrad arrived at Sylhet in the early 14th century that marks a milestone in the history of Barak Valley. Customary law is seen in existence in the administration and running of the Mosques and Dargahs of Barak Valley. It forms the basis of administration and functioning of the Mosques and Dargahs of the region of Barak Valley. At the local level, it provides internal regulations for Mosques and Dargahs. It is easy to apply customary laws in cases like committee formation, inheritance rights and to the land-related questions and source of fund collection and utilization of collected funds of Mosques and Dargahs. Customary laws prevailing in the Mosques and Dargahs of Barak Valley are inexpensive and easily excessive. Customary laws are good as justice is delivered by it without delay and with less expense. Its influence is found in many areas of functioning of the Mosques and Dargahs of Barak Valley. Thus, it plays a crucial role in defining the powers, functions, and activities of the Mosques and Dargahs of Barak Valley. Customs prevailing in the Mosques and Dargahs of Barak Valley is ancient and immemorial in origin, reasonable in nature and continuous in use and certain among others. These customs are recognized as major sources of law under the Indian legal system and constitution. The courts of India have also recognized them as law for the Mosques and Dargahs related peoples of Barak Valley; their own customary laws are their primary source of laws and have increasing relevance for areas of formal laws of the Mosques and Dargahs of Barak Valley. This research paper would try to emphasis the need of understanding customary laws prevailing in the Mosques and Dargahs in Barak Valley and also to discuss the different structures and approaches of Mosque and Dargah related justice system along with the regular justice system.

OBJECTIVES OF THE STUDY

- To study the customary practices attached to the administration of the institutions.
- To study the customary rules and regulations of the institutions which influence in the community life
- To study the community development programmes attached to the institutions.

REVIEW OF LITERATURE

Assam has been a Centre of Sufis and Sanyasis from time immemorial. They left a vast legacy behind them and particularly their shrines (Dargahs) which were later on built-in memory of these departed souls attracted the attention of the scholars and historians. Consequently, in spite of difficulties and the paucity of sources, a number of works have been published on the advent of Sufis and their activities and the Mosques developed along with the Shrines. Among them mention may be made of the work of S.L. Baruah's A Comprehensive History of Assam, Malik Mohamed's The Foundations of the Composite Culture in India, Edward Gait's A History of Assam, Mohd. Assad UzZaman's Sufi Tradition and Culture, Kamaluddin Ahmed's Karimganj Itihas, Achyut Charan Choudhary's Sreehatter Itibrita, Mohammed Yahya Tamizi's Sufi Movements in Eastern India and so on., Barak Valley of Assam also witnessed a good number of Sufis coming from distant parts of India. With Sufis, many Mosque and Dargahs were set up. But the literature so far have been published is not sufficient to discuss in details on the theme. More historical facts and valuable information on the subject is still untouched. It is out of the historical enquiry, the present scholar has undertaken the topic

⁴ Bazlur Rahman Khan, Assam Muslim History: A Brief Outlines, This small piece of writing encompasses Muslim history from beginning to colonial period and geographical –historical realities that shaped Muslims destiny in the page of history, 2012, P. 2.



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Creatcrit

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VOLUME-6 • ISSUE-2 • JULY-2019



Editor : N. Pattanayak
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Creatcrit : Vol.-6, No.-2, July 2019

ISSN : 2347-8829

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Publisher : Dr. N. Pattanayak

Layout : Jatin Saikia

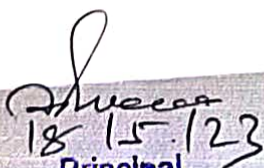
Cover Design : Prasanta Kr. Gogoi

Printing : Ajanta Press, M.G. Road, Nagaon-1

Editorial Office : Creatcrit C/O- Dr. N. Pattanayak, Gandhinagar, L.K. Road, Haibargaon, Nagaon, Assam, India. Pin- 782002

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Creatcrit : ISSN 2347-8829
Vol.- 6 No.- 2, July, 2019
pp, 111-115

Badshah in the Folk Life of Barak Valley

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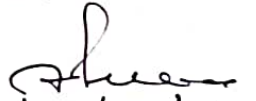
Abstract:

The nomenclature 'badshah' is well accepted in the Barak valley. Seija badshah, sanpir badshah, anahari badshah are the terms used for saints is in much circulation here. This category of itinerant saints belongs to fakir or ascetic class. According to folk belief these badshahs hae some sort of supernatural power who can bring back a nearly dying man to life, can heal a person from irrecoverable disease or can make an unwilling person willing. This class of people having some miraculous power are respected both by hindus and muslims. Field study finds that the seat of seiji badshah is atop a hill surrounded by jungles, east of Sargola, the biggest water beel of Asia. Sanpir badshah is worshipped by hindu women whose husbands are alive. Anahari badshah is called anahari baba by the hindus. His tomb is called makam by the muslims and ashram by the hindus. This institution of badshah has it significance because it creates a strong bond between various communities living in the valley.

Keyword: badshah, tomb, harmony, hindus, muslims

‘বাদশাহ’ রাজা নন; সংসার ত্যাগী সাধক। তাঁরা বৈরাগ্য পহার পথিক। লোকবিশ্বাসে তাঁরা অসামান্য ক্ষমতাধর। তাঁদের কৃপাধন্যে নানাবিধ মঙ্গলসাধিত হয় বলে সাধারণের বিশ্বাস। বরাক উপত্যকার লোকজীবনে ‘বাদশাহ’র পরিসর বহুধা বিস্তৃত।

‘বাদশাহ’র স্থানীয় উচ্চারণ ‘বাস্‌সা’। বরাকপারের লোকজীবনে সৈজা বাদশা, সানপির বাদশা, অনাহারি বাদশা প্রমুখের প্রচলন লক্ষ করা যায়। বাদশাহর পরিচয় দিতে গিয়ে সমাজতাত্ত্বিক সৃষ্টিং চৌধুরী বলেন— (i) 'Badsah is the Malik or lord of the entire region where his cult prevails. (ii) He rides on a tiger and other beasts. He Protests his human devotees from all predators. (iii) He is the guardian deity of jungles and also of hills. An offering to him is a must before one enter a jungle for felling trees. (iv) He protects cattle. when a cow gas a calf, the


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A Peer-Reviewed Indexed Journal of Humanities and Social Science

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Published by:
Department of Bengali
Karimganj College, Karimganj, Assam, India
<https://www.thecho.in>

This is to certify that the paper entitled "Propagation of Social Harmony in Barak valley by Sufi Personalities" published in Volume-VI Issue-III (January 2018) of *Pratidhwani the Echo* is contributed to the journal by Prof./Dr./Mr./Ms. **Dilwar Hussain Talukdar**, Research Scholar, Dept. of Sociology (History), USTM, Meghalaya, India

It is further certified that she/he is a ~~Single Author/First Author/Co-Author~~ of the said article.

The Journal *Pratidhwani the Echo* is a Quarterly online peer reviewed journal bearing e-ISSN 2278-5264, p-ISSN 2321-9319 and have successfully published various articles covering the broader fields of Humanities and Social Science.

Date: 31-01-2018

Place: Karimganj

Bishwajit Bhattacharjee

(Dr. Bishwajit Bhattacharjee)

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Pratidhwani the Echo

A Peer-Reviewed International Journal of Humanities & Social Science

ISSN: 2278-5264 (Online) 2321-9319 (Print)

Impact Factor: 6.28 (Index Copernicus International)

Volume-VI, Issue-III, January 2018, Page No. 175-179

Published by Dept. of Bengali, Karimganj College, Karimganj, Assam, India

Website: <http://www.thecho.in>

Propagation of Social Harmony in Barak valley by Sufi Personalities

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Dilwar Hussain Talukdar

Research Scholar, Dept. of Sociology (History), USTM, Meghalaya, India

Abstract

Sufi's world is world of peace and harmony. Their mission is always service to mankind and worship only for Almighty, They believe in peace, tolerance and compassion. Hazrat Shah Adam Khaki, Mirul Arefin and Shah Natawan were one of the most renowned and revered sufi saints of Barak Valley. Their holy Dargahs at various places of Barak Valley are region- renowned spiritual centres. They had propagated the teachings of Islam and the teachings of real Sufism to the people of the Barak Valley and abroad. They spread the message of peace, love and tolerance to the mankind. The holy three Dargahs of the great Sufi saints of Barak Valley have a miraculous power to attract the people in large numbers, irrespective of faith and religion. These Dargahs reflects the true Sufi traditions. These centres of spiritualism promote region- peace, universal brotherhood, social harmony and tolerance. The marvelous teachings of Barak Valley Sufi saints for peace and social harmony have great relevance even today. Their message of peace is universal and meant for the whole mankind. This message is not confined to any particular community, society or country but it extends to the whole world. In fact, peace and love have no limitations; it cannot be enclosed within the boundary walls of any particular community, society or country but it should cross all borders and barriers and must reach the whole mankind.

Key words: *Sufi, Saints, Barak Valley, Social harmony.*

Introduction: According to scholars, Murray Titus – opines Sufism is an attitude of mind and heart towards Almighty and day to day problem of life. Sufism is one the most dynamic and interesting dimension of Islamic religious and cultural expression. Sufism or Mysticism is the basic of all religions. The term Sufi is coined from SUFFA (purity). The word Sufi (Suf) in Arabic means wool. Right from the times of the Prophet Muhammad and his companions, there were persons who had discarded all worldly enjoyments and pleasures because of their sincerity and devotion in prayers and in

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Propagation of Social Harmony in Barak valley...

Moyin & Dilwar Hussain Talukdar

following the command of Almighty. They had simple living and used to wear wool i.e. Suf and were called as Sufi. Sufism is thus a path where salvation is obtained by continuous remembering and worshipping Almighty. Concentration in Sufism achieved either as a Almighty gift or by spiritual practices to remember Almighty in every breath. This require purity, the purity of body and soul which helps in developing the concentration. This increase his efficiency, concentration and aptitude and scientifically also proved if a man keeps his hand, face and feet, takes regular baths and wear clean clothes with no dirt he/she feels fresh and mentally cool. The theory of Sufism also explains the best way of approaching to Almighty is the love with His creatures; this approach recognizes service to humanity.

History of Sufism in Barak Valley: Sufism was inherent in Islam and these internal forces within Islam can not be isolated from the external factors. Sufi believes that Prophet Muhammad (SA) was a Sufi throughout his life. The practice of Sufism requires a strong relationship of teacher (master) with student (disciple) whoever is a teacher is a guide. He takes care of his disciple in every matter. After Prophet Muhammad (SA) the first Calipa (disciple) Hazrat Abu Bukkar Siddique taught the Sufis to renounce all their material goods for Islam and voluntarily adopt poverty. The second Calipa Hazrat Umar Farooq was a model of simplicity always wore a gown with patches. The third Calipa Hazrat Usman Goni was the best example in resignation to Allah during crisis. The fourth Calipa Hazrat Ali was a model for Sufis, thus Hazrat Ali regarded by Sufis as their leader or teacher in both theory and practice of Sufism, new centres of muslim culture came to existence where Sufism also reached its heights. Some of the most prominent Sufis of different places before Shah Jalal Mujarrad: Nizam Uddin, Moin Uddin Chisty, Hasan Basri, Rabia Basri, Shaiq, Bayazid Bistami, Juned, Shibli, Abdul Qadir Jeelani, and Zunnun etc.

Onset of Sufism in Barak Valley: A formal history of the Sufism or mysticism in Barak Valley begins in 14th century A.D. after the conquest of Gaur by Sikandar Shah Ghazi accompanied by Shah Jalal Mujarrad in 1303A.D. At that time, Sylhet, along with Bengal was a class ridden society where weaker section was a victim of exploitation and torture. The message of social justice, equality and classless Islamic society brought by Hazrat Shah Jalal created a wave of conversion blowing throughout the Sylhet and Barak Valley. People embraced Islam village after village. Many saints amongst 360 companions accompanying Hazrat Shah Jalal Mujarrad spread Islam throughout the Barak Valley resulting conversion of large number of local people to Islam due to spiritual influence of Shah Badar Uddin, Shah Sikandar, Hazrat Shah Adam Khaki, Shah Zai Uddin, Shah Abdul Malik, Mirul Arefin and Shah Natawan etc.

It was by the overpowering spell and charm of their magnetic personalities, spiritual powers and exemplary conduct that they won the hearts of people of Sylhet

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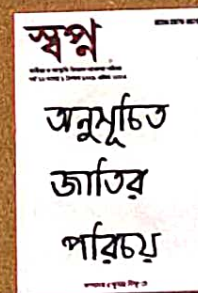
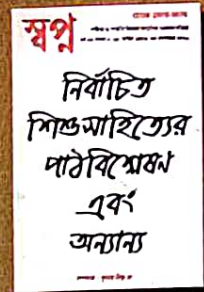
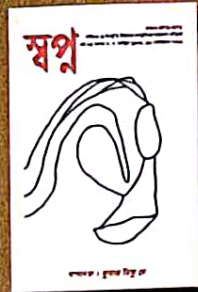
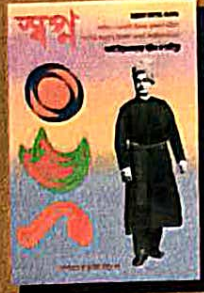


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ISSN 0976-9676

UGC Approved Research Journal

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বর্ষ ২৫ সংখ্যা ২, ২১ আশ্বিন ১৪২৫, ৮ অক্টোবর ২০১৮



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ISSN 0976-9676

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সম্পাদক

কুমার বিষ্ণু দে

স্বপ্ন

হরলংপার শীতলাবাড়ি কলোনি
লামডিং, আসাম-৭৮২৪৪৭

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BICHITRA VHABANA-3 (বিকল্প ভাবনা-৩) Edited by Kumar Bishnu Dey,
Harulongpher Silla Bari Colony, P.O. Lumding, Dist-Hojai, Assam-782447

PUBLISHED : 8 October 2018

PUBLISHER : N. R. Dey

COVER : Kumar Bishnu Dey

DTP & DESIGN : Biplab Ch. Dey
Purnima Dey

PRINTED : SARASWATI PRINTERS
Harulongpher, Lumding
Assam-782447
Mobile No. 09957442603

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ISSN 0976-9676

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ISSN 0976-9676
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সর্বাঙ্গীৎ দাস

রবীন্দ্রনাথকে বাদ দিলে বিশ শতকের বিশ-ত্রিশের দশকের সমাজ ও সমাজ সচেতন কবির আসন নজরুল ইসলামের। বাংলার কাব্যাকাশে তিনি যে সমাজ উদ্ভিত হচ্ছিলেন, তখন বিভিন্ন নেতিবাচক ঘটনাবলী বাংলা তথা ভারতকে মেঘাচ্ছন্ন করে রেখেছে। বঙ্গভঙ্গ রদ, অসহযোগ আন্দোলন, খেলাফৎ আন্দোলন— সর্বোপরি পরাধীন ভারতবর্ষে সংগঠিত হচ্ছে বিভিন্ন প্রতিবাদ প্রতিরোধ। সাম্রাজ্যবাদী ব্রিটিশ সরকারের বিরুদ্ধে চলেছে নানা প্রতিবাদী কর্মসূচি। অন্যদিকে দারিদ্র্য, সাম্প্রদায়িকতা, ধর্মীয় ভণ্ডামি, অনাচার ইত্যাদি সমাজকে গ্রাস করে রেখেছে। নজরুল যাবতীয় গ্লানি প্রত্যক্ষ করেছেন। দেখেছেন সমাজের অভ্যন্তরে অনাচার অবিচারের অবিরাম প্রবাহ। অনুভূতির আন্তরিক আবেগ কবির লেখনিতে দিয়েছে বাণীর বিদ্যুৎ দীপ্তি। তাঁর মধ্যে প্রবলভাবে দেখা দিল যুগের উন্মাদনা ও বেদনা ; নিছক কল্পলোকে অবস্থান করা তাঁর পক্ষে ছিল দুঃসাধ্য। ফলে একদিকে প্রতিকূল সমাজব্যবস্থার বিরুদ্ধে তাঁর প্রতিবাদ, অন্যদিকে বিভিন্নভাবে বিভাজিত মানুষের উদ্দেশ্যে মিলনের আহ্বান। প্রতিবাদ প্রবণতা ও সম-মিলনের প্রেক্ষাপটে নজরুল সাহিত্যের ভিত্তি হচ্ছে মানবধর্ম। প্রাসঙ্গিক মন্তব্যটি প্রাণিধানযোগ্য— “রবীন্দ্রসমকালীন কবি সত্যেন্দ্রনাথ, যতীন্দ্রনাথ, নজরুল ইসলাম সমাজ সচেতন কবি। তাঁদের কাব্য কবিতায় সমাজের সর্বস্তরের শাসন-শোষণ ও অসঙ্গতির চিত্র প্রতিফলিত। সত্যেন্দ্রনাথের কবিতায় সাম্যের বাণীর সঙ্গে ধনী-নির্ধন উচ্চনীচ ভেদাভেদহীনতার কথা আছে ; মেথর-মুচি-বারাঙ্গানা তাঁর কবিতায় মানুষের মর্যাদায় স্বনলাভ করেছে। যতীন্দ্রনাথের কবিতাতেও প্রচলিত ব্যবস্থার বিরুদ্ধে সংশয়, ব্যঙ্গ বিদ্রূপ, হতাশা ও সমালোচনার ঝংকার ধ্বনিত। তবে নজরুলের কাব্য কবিতাতেই সমাজচেতনার উল্লেখ্য প্রকাশ লক্ষ করা যায়। সত্যেন্দ্রনাথের কবিতায় যে মানবধর্মের উন্মেষ নজরুলের কবিতায় তার পূর্ণত।”^১

জনম্মলগ্ন থেকে নজরুল সংগ্রামী। স্বল্পবয়সে পিতৃবিয়োগের ফলে সংসার চালানোর দৃঢ় আর্থিক চাপ তাঁকে নাকাল করে তুলেছিল। চোখের সমানের গোটা বিশ্ব তাঁর কাছে তমসাচ্ছন্ন। এরই মধ্যদিয়ে তাঁর পথচলা। অভাব-অনটনের লেলিহান গ্রাসে দক্ষ নজরুল প্রত্যক্ষ করলেন দারিদ্র্য সৃষ্টির নেপথ্যে রয়েছে স্বার্থান্বেষীর কুচক্রান্ত। ‘মাটিতে যাদের ঠেকে না চরণ, মাটির মালিক তারা হন।’ শ্রমিক দিনমজুর যারা হাড়ভাঙ্গা শ্রম করেও উদরাগ্নি নির্বাপিত করতে অক্ষম, অন্যদিকে শ্রমবিমুখের ধন সম্পদ স্ফীত হয় ক্রমশ। তাই তাঁর আহ্বান— ‘জাগো জনশক্তি ; হে আমার অবহেলিত পদপিষ্ট কৃষক, আমার মুটেমজুর ভাইরা ! তোমার হাতের

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JOURNAL of
THE ASIATIC SOCIETY OF MUMBAI

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This is to certify that the article entitled
**A CRITICAL ANALYSIS ON JUDICIAL ACCOUNTABILITY OF SUBORDINATE
COURTS IN INDIA**

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University Grants Commission

Published in Vol. 96, No.07 (II) July 2022

JOURNAL OF THE ASIATIC SOCIETY OF MUMBAI with ISSN : 0972-0766
UGC-CARE List Group I
Impact Factor: 3.947

Editor-in-Chief





A CRITICAL ANALYSIS ON JUDICIAL ACCOUNTABILITY OF SUBORDINATE COURTS IN INDIA

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Meghalaya

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Abstract

In the Indian democratic polity, the Judiciary plays an important role towards achieving social 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 & Sessions Judge to the Magistrates. Article 323-B of the Constitution deals with the establishment of Tribunals etc. for adjudication of specified disputes.

Key Words: Subordinate Courts, Accountability, Human Rights etc

Introduction

The preamble to the constitution of India speaks for the goal it wants to achieve. Besides, the Fundamental Rights and the Directive Principles of State Policies enshrined in Parts-III & IV of the constitution are the substantive rights and guidelines respectively for the state machineries to protect the basic rights and liberties of the people who composed the constitution.

The Constitution of India and other relevant legislations provides for different types of courts which are devoted and committed for ensuring justice to the litigants who are victimized either by the state action or by individual action. The judiciary comprises of the Supreme Court of India¹ at the highest level, the High Courts² in the States level and the Districts Courts³ comprising the court of District & Sessions Judge, Civil Judges and the Magistrates Courts in the district as well as sub-division level. Apart from the common category of courts, some Special Courts and Tribunals⁴ 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 India⁵ approach the Hon'ble High Court concerned or the Supreme Court of India or

¹ Article 124 of the Constitution of India

² Article 214 of the Constitution of India

³ Articles 233 to 237 of the Constitution of India

⁴ Article 323-B of the constitution of India

⁵ Article 12 of the constitution of India defines the term state as 'the state includes the government and parliament of India and the government and the legislature of the each of the states and all local or other authorities within the territory of India or under the control of the government of India.'



the National/State Human Rights Commission,⁴ 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/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 these issues pertain nothing but human rights either directly or indirectly.

Research Methodology

Methodology is the essence of study of a particular subject. Research methodology is a systematic investigation to give new knowledge about the phenomenon or problem. In the preparation of Seminar Paper/ Research Article on the subject "A Critical Analysis on Judicial Accountability of Subordinate Courts in India" the investigator adopted the methodology which comprises the following methods and techniques:

Methods: The research is Doctrinal Legal Research. The doctrinal research means research that has been carried out on a legal proposition or propositions by way of analyzing the existing statutory provisions and cases by applying the reasoning power. Ascertaining a legal rule for the purpose of solving a problem is one of the purposes of the doctrinal legal research. This has been achieved by the original sources of law. The Acts of Parliament and the Acts passed by the State Legislature fall under this category of study. The case laws decided by the Supreme Court and High Courts which are binding on lower Courts fall under the category of precedents.

Techniques: The techniques adopted comprises of content analysis, collection of data/materials from the Secondary sources, which consist of materials collected from books, magazines, news papers, journals, reports and publications of various associations, research scholars, universities, the Central, State and foreign governments or of international bodies and their subsidiary organisations, internet sources and different statutes.

Role of a Judge During Court Proceedings

During the trial, the presiding judge has the primary responsibility to see that justice is carried out in its true perspective. The Judge has a duty not only to protect the interests of the defendant or of an accused,

⁴ Sections 3 and 21 of the Protection of Human Rights Act, 1953 provide for establishment of the National Human Rights Commission and State Human Rights Commission in the states. At present the NHRC has been working at the national level. It is situated at Delhi. In Assam, the State Human Rights Commission has also been established and the same is also in function.

⁵ Section 436 Cr. P. C. provides, inter alia, that when a person accused of an offence which is shown as 'bailable' in the first schedule of the Cr. P. C. be enlarged on bail with or without sureties. The court or police has no power to detain a person in custody if he is accused of a 'bailable offence'. Similarly, section 167 (2) Cr. P. C. provides that if the investigation of an incident cannot be completed within a period of 60 days in case the offence alleged is punishable with imprisonment up to 10 years, and 90 days in case the offence is punishable for more than 10 years, then the accused person gets unfettered right to be released on bail.



but also to protect the interests of the plaintiff/petitioner as well as of public, and also to ensure that the guilty are convicted and the innocents are released forthwith. 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.⁸

While presiding over the proceedings of the court, the judge has certain role to play. 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 *Prithpal Singh etc. v. State of Punjab & Ors.*⁹ 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 the case of *Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and Ors.*¹⁰ the Hon'ble Supreme Court of India while emphasizing the role of a court in dispensing justice held:

"The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e., truth is arrived at. This becomes more necessary the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness."

In many situations, such as in the matter of remand of an accused to police or judicial custody; bail of an accused in non-bailable offences; sentencing an accused to imprisonment or fine; releasing an accused on probation of good conduct, allowing adjournments at the instance of the parties; examination of a witness who is not enlisted, allowing production of documents at the later stage of proceedings etc.

⁸ Procedure in the Justice system, third Edition, Gilbert B. Stuckey.
⁹ (2012) 1 SCC 10
¹⁰ AIR 2006 SC 1367

the court is required to apply its 'discretion'. The term judicial discretion is not defined anywhere. It does not mean acting at one's own whims. It cannot be exercised capriciously. Rather, it must be acted judiciously. The term judicial discretion is explained in the judgments of the higher courts. Hon'ble Justice V.R. Krishna Iyer in the case of *Gudikanti Narasimhulu v. Public Prosecutor*¹¹ quoted Benjamin Cardozo¹² who stated:

"The Judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life". Wide enough in all conscience is the field of discretion that remains.

Concept of Victimology

Till date, the justice delivery system in the district level is 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 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 concern about the rights of victims. As a result of which, the victims unless he/she filed a complaint case¹³ remain unaware about the progress of investigation as well as decision of the case. The victim who became a 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 instructions 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.

In the case *George Muthoot v. State of Kerala*¹⁴ 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. Almost similar view has been enunciated by the Hon'ble Supreme

¹¹ Benjamin Nathem Cardozo (May 24, 1870 July 9, 1938) was a great American jurist who served on the New York Court of Appeals and later as an Associate Justice of the Supreme Court. He is remembered for his significant influence on the development of American common law in the 20th century. He is also known for his modesty, philosophy and vivid prose style.

¹² AIR 2004 SC 346

¹³ Section 2(d) of the Cr.P.C. defines the term complaint. It means any allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some persons, whether known or unknown, has committed an offence, but does not include a police report. In a case instituted on a complaint, the complaint is required to take steps in accordance with law. The complainant has the option to choose the witnesses and production of documents, which the complainant loses (as of now) when the same matter is reported before the police.

¹⁴ MANU/KE/0169/2010. (It is a recognized website namely www.manupatra.com)

Court of India in the case of Zahira Habibulla's case.

Transforming Human Rights in Domestic Law from International Law

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 viz- 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 connote amongst others, rights relating to life, liberty, equality and dignity of a human being.

Article 51(c) of the Constitution of India provides that the state shall endeavour 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 has 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.

In the case of *Vishaka v. State of Rajasthan*¹⁵ the Hon'ble Supreme Court of India held that-

"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse. Independence of judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the field when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law."

Similar view has been taken by the Hon'ble Supreme Court of India in the case of *People's Union for Civil Liberties v. Union of India*¹⁶

¹⁵ AIR 1997 SC 3011

¹⁶ (1993) 2 SCC 746

In accordance with the scheme of the Protection of Human Rights Act, 1993, the National Human Rights Commission at the center¹⁷ and some state Human Rights Commissions¹⁸ have been established in the states and they are discharging their functions as provided under the Act. Although there is provision for designating/establishing Human Rights Court in the district¹⁹ 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 experienced, the common people think that it is only those Commissions who have their power to protect human rights of the common people. But this is not so in as much as all the courts are duty bound to protect human rights.

Problems of Subordinate Courts in Discharging Duties

I. Less Number of Judges: The Nos of Judges is less in comparison to other countries. In America the numbers of Judges are 107 per million, 75 in Canada and 51 in United Kingdom, while in India the no is 12/13 only. As a result of which, in our country some courts are over burdened. Resultant inadvertent delay by the courts lead to violation of human rights pertaining to speedy trial of a litigation.

II. Lack of Infrastructure: To deliver quality justice promptly the infrastructure must be good enough. Although the scenario is developing, still the infrastructure is required to be developed. There are many courts where the witness shed is not available. Alternative lodging arrangement is not available in many courts. There are some courts which are stills functioning in rented rooms with unhygienic condition. 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.

III. Lack of Training: Specially in cases by or against the Government, it is experienced that the state represented by the Public Prosecutor, Assst. Public Prosecutors or Govt. Pleaders as the case may be, the Govt. fails to stand. This occurs primarily due to the bad selection process of such representatives. Further, those who are entrusted with the holy job are not given training in the respective fields about the role they are to play with the change of legal scenario including human rights.

IV. 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/State Legal Services Authorities/District Legal Services Authorities, people are not aware about the benefits of free legal aid. As a result of which, many persons have remained as victim till date. The regular courts being over burdened are not in a position to create awareness in the court about the beneficiaries of free legal aid.

V. 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. But, in many cases the investigating

¹⁷ Section 4 of Protection of Human Rights Act, 1993

¹⁸ Section 21 of the aforesaid Act.

¹⁹ Section 30 of the Protection of Human Rights Act provides for designating a court of Sessions as a district Human Rights Court in each district. The section is not clear about the powers and functions of the court.

agencies investigate any incident in the traditional way resulting to technical irregularities which paves the path for easy acquittal. Similarly, large Nos 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.

Conclusion & Suggestions:

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, upon which 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. It is significant to note that the provisions of Section 173(8) Code of Criminal Procedure open with non-obstante language 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.

It has been held in *Shri Bhagwan Sanardha Sreepada Vallabha Venkata Vishwanatha Maharaj v. State of Andhra Pradesh and Ors.* MANU/SC/0402/1999(JT 1999 (4) SC 537) 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.

In *Gauri Shanker Sharma etc. v. State of U.P. etc.* MANU/SC/0132/1990 (AIR 1990 SC 709), the Hon'ble Supreme Court of India held: the exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, often results in miscarriage of justice and makes the justice-delivery system suspect and vulnerable. In the ultimate analysis society suffers and a criminal gets encouraged... The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crime in a civilized society governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under trial prisoners or suspects tarnishes the image of any civilized nation and encourages the men in "khaki" to consider themselves to be above the law and sometimes even to become a law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crop, the foundations of the criminal justice-delivery system would be shaken and civilization itself would risk the consequence of heading towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of the judiciary itself, which if it happens, will



be a sad day, for anyone to reckon with. Similar proposition has been laid down in the case of State of Madhya Pradesh v. Shyamunder Trivedi and Ors. MANU/SC/0722/1995 : (1995) 4 SCC 262.

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. In B.P. Achala Anand v. S. Appi Reddy and Anr. MANU/SC/0100/2005 (AIR 2005 SC 986), 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.'

A more serious ground which disputes us 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 foughs 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 may not be dismissed summarily. It causes disquiet and concern to a court of justice if a person seeking justice is unable to appear, 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 tranquillity at the trial. Turbulent conditions putting the accused's life in danger or creating chaos inside the court hall may jettison public justice. If this vice is peculiar to a particular place and is persistent the transfer of the case from that place may become necessary. Likewise, if there is general consternation or atmosphere of tension or raging masses of people in the entire region taking sides and polluting the climate, vitiating the necessary neutrality to held detached judicial trial, the situation may be said to have deteriorated to such an extent as to warrant transfer.

"Witnesses" as Bentham 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 puffed 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 smoothen 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.

Need for circumspection was dealt with by the Hon'ble Supreme Court of India in *Mohamud Shamji Son's case* (supra) and *Ram Chander v. State of Haryana MANU/SC/0206/1981 : 1981CrILJ609* which dealt with the corresponding Section 540 of Code of Criminal Procedure, 1898 (in short the 'Old Code') and also in *Jamiraj's case* (supra). While dealing with Section 311 this Court in *Rajendra Prasad v. Narcotic Cell thr. Its officer in Charge, Delhi MANU/SC/0397/1999 : 1999CrILJ5529* held as follows:

"It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not "fill the lacuna in the prosecution case".

A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.

Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

Victims being the main part of the criminal proceedings may 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 in Canada 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 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 yet not 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 impossible, 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 3 circumstances is complete. It rings eloquent by the emphasized words "the victim shall have the right to prefer an appeal"



As on November, 2010 the total number of vacancies in strength of the Supreme Court Judges is only two, thus, 29 out of 31 is the present working strength. Whereas, in High Courts the total sanctioned posts of Judges is 895 out of which 287 are vacant. As on July, 2010 the total sanctioned strength of the District and Sessions Judges is 17090 out of which 3070 are vacant. As per the 120th Report of the Law Commission, there should be 50 Judges per 10 lakh population instead of 10.5 Judges as inadequate Judge strength was a major cause of delay in disposal of cases.

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. Once this principle would be followed in its real perspective, hopefully human rights would be protected better than before.

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'²⁰ and 'compounding of offences'²¹ are also the ways to dispose of cases early. If incentives are given for disposal of such cases by the Alternate Dispute Resolution System, then naturally the presiding officers would adhere to those provisions and resultantly there would be more disposal.

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²⁰ Sections 265-A to 265-L of Chapter XXI-A of Cr.P.C
²¹ Section 320 Cr.P.C



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