INTRODUCTION AND SCHEME OF THE STUDY

Crime and offences are as old as our civilization. If we talk of early history, there existed informal way of disposing of these offences which were of simple nature. As the time passed, our living standards and style also changed and got complicated giving rise to new type of offences. Accordingly, procedure to deal with offences was modified also. In the process, a time came when all these informal rules and regulations were codified and a formal system of justice known as court was introduced.

Crime is a phenomenon found in all societies at all times. Taking a society as a whole we have to consider crime has a normal phenomenon. Crime is an integral part of all healthy societies and is bound up with the fundamental consideration of all social life and by the very fact it is useful because these conditions of which it is a part of themselves indispensable to the normal evolution of morality and law.  

1.1 COURT SYSTEM IN INDIA

The history of the evolution of courts in India goes back to Vedic times when the king, in return for the taxes paid to him by the people performed the duty of a judge. It is well established fact that administration of justice did not form a part of a State’s duties in early time. There are many passages in ancient Hindu

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2 Birendra Nath, Judicial Administration in Ancient India, Patna: Janki Publication, 1979, p.27.
literature pointing to a condition of society without a king. The aggrieved party had itself to take such steps as it could in order to get its wrongs redressed.

The most pronounced feature of Hindu polity was that law was administered by the Sabha. Normally, it was the Sabha or the popular village assembly rather than the king who tried to arbitrate when it was feasible to do so. Though the king became the above all, he did not become the source of law; he remained simply its holder. He was guided by Dharma. He was expected to live up to the ideals of Kingship as laid down in Dharamsastra. In his functions of administering justice, he had to act according to the advice of the priests and learned Brahmanas. So far as judiciary was concerned, the king appointed judges to help him in administering justice; he himself remained head of the administration of civil law and penology.

1.1.1 Court and Rule of Law

Rule of Law is the guiding star in a democratic society. The rule of law and independence of judiciary always go together. The two cannot be visualized apart. Generally, opinion is that laws are collective wisdom of the member of the society expressed through their representations in the legislature. When it feels the need to regulate a particular activity, society enacts the law. In the administration of justice, law plays the vital role. Law is the means whereas justice is the end. In the words of Holwes, "law is not a brooding omnipotence in the sky, but a flexible instrument of social order". But Kelson remarked, “There is no eternal law. The law that is suitable for one period may not be for another. We can only strive to provide every culture with a corresponding system of law. What is good for one

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5 A.S. Altekar, op. cit., p.246.
may be ruin to another?  

So, for making the path of justice equal, indifferent and unbiased, law has to be dynamic in its conception.

### 1.1.2 Litigation

Litigation is as old as civilized history. It is one of the modes of resolving disputes. Usually the party aggrieved by the actions of another initiates the legal proceedings before the court of law by filing a complaint. The remedy sought for is also specified in the complaint. After this the other party is to file his response, arguments are to be presented by both sides (Plaintiff and Defendant). After this the final and the most important task is to be performed by a Judge. A judge has to refer to the law, analyse the facts, determine if there has been a violation of law, analyse the arguments raised by both parties in mind and determine as to whether the remedy requested for is required or not. After the detailed analysis the judge passes a decision and this marks the end of the litigation. But it is not so always, as simple as it sounds litigation in reality is complex and time consuming.

In litigation, it is customary to find the conjunction of law and fact; but occasionally there is no dispute about the facts, the question being entirely one of law; and against there is frequently no dispute about the law, but a dispute purely about the facts. Matters of law are for the judge, and matters of fact are for the jury; mixed matters of law and fact are for the jury, but properly dealt with they would be distinguished.

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7 Ibid.
1.1.3 Concept of Litigation

According to Oxford Advanced Learner’s Dictionary (4th Edition), meaning of litigants is: “The process of making or defending a claim in court”. In simple words, the term ‘Litigation’ may be defined as the total procedure adopted by a court form filing a suit to deciding the same including appeal.

1.1.4 Litigant

Litigant is a person who is making or defending a claim in a court of law. In other words, the litigant may be defined as a person who takes part in the process of litigation including both who files a suit and who defends it.

The administration of justice is divided into two parts:

1) Civil and 2) Criminal

- The wrongs which are the subject-matter of civil proceedings are called civil wrongs.
- The wrongs which are the subject-matter of criminal proceedings are called criminal wrongs.

The two parts of the administration of justice differ from each other on many points:

First, they are administered by two different sets of courts. Civil Justice is administered by civil courts and the criminal justice is administered by criminal courts.

Second, there are two different forms of procedures for the administration of these two classes. Third, the results of the proceedings are also different. A successful civil proceeding results in a judgment for damages, or recovery of debts, or any other a like relief. A successful criminal proceeding results in punishment of the wrongdoer. In some criminal proceedings only preventive measures are taken against a person who is likely to commit some wrong in future.
1.1.5 Legal System in India

India has one of the oldest legal systems in the world irrespective of its present geographical identity. The legal system and the jurisprudence in India stretch back into the centuries, obviously with the external influences from time to time.

The Indian Constitution was framed by the Constituent Assembly and came into effect from 26th November 1949, which is celebrated as the biggest written constitution of the world. The Constitution is divided into Parts and further into Chapters and Articles. The Constitution provides for a federal nation consisting of a Union of States. It provides for separate executives and legislatives for the Union and for each of the States and demarcates the powers of each. However the residual power is with the Union.

On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court of India came into existence. The Supreme Court has original, appellate and advisory jurisdiction. Its exclusive original jurisdiction extends to any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights.

The High Court stands at the head of a State's judicial administration. There are 18 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories Delhi alone has a High Court of its own.
Other six Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint.

Subordinate courts are divided into criminal and civil courts. The civil courts consist of Munsif courts and courts of Subordinate Judges. The jurisdictions of the lower civil Courts are decided based on the pecuniary limits of the claims as well as the territorial jurisdiction. Appeals normally lie from these courts to the District Court and then to the High Court. The criminal courts consist of Magistrates of first or second class and the Courts of Session. Appeals lie to the Court of Session and then to the High Court. Specialized tribunals are established under various enactments such as the Income tax Appellate Tribunal, the Company Law Board, the Sales Tax Appellate Tribunal, the Consumer Forums, the Central and State Administrative Tribunals, the Debt Recovery Tribunal. All these tribunals are under the superintendence of the High Court within whose territorial jurisdiction they function.

1.1.6 Court System in Present India

The judicial system provided by the constitution of India is comprised of three types of courts. At top, it is the Supreme Court, at middle the High Court and at bottom the Subordinate Courts (District Courts). The first two types of courts are of appellant nature while a litigant approaches first to the subordinate courts. So, being at the lowest level, district courts occupy a prominent place in the judicial system in India.

In the study, the researcher has selected to study the pattern of litigation at district level which includes- nature of cases, socio-economic background of litigants, procedural complexities faced by litigants, possibilities of compromise and satisfaction level of litigants.
1.2 IMPORTANCE OF THE STUDY

The importance of the study lies in two points. The first is that it is district courts or subordinate courts where a litigant first approaches for remedy because the Supreme Court and the High Courts are mainly established to enjoy appeals. The second ground argument is that in Public Administration such type of analytical studies are less frequent and to fill this gap, the researcher has chosen the proposed topic to study.

1.3 REVIEW OF LITERATURE

Before attempting to conduct research on any problem, it is essential to conduct the survey of the related literature. The researcher gets benefited by the work already done in the field by the predecessors. This is because by surveying the related literature, the researcher gets an insight into the problem. The related literature includes the work already done and published in the form of books, research papers, research articles, journals, newspapers, seminar papers and the like. The researcher, therefore, has conducted as in-depth survey of the literature available on the problem and the present section is devoted to it.

1.3.1 Books

The anthology\textsuperscript{8} by Soli, J. Sorabjee is a compendium of articles that have been published in various issues of Law and Justice. These articles have been selected for their thematic nature from a diversity of jurisdiction. The ultimate aim and aspiration in bringing out this book is justice-political, social and economic. The underlying purpose is to emphasize that the quest for Justice is the common-

endeavor of all judges and lawyers in every society based on the rule of law and which respects the human dignity of every person as a member of the human family.

**R.C. Sekhar** in his chapters, attempts to correct imbalances caused by the power structure in society and an obsession with markets, which pushes law to minimalism concentrating only on the don’ts of ethics. Viewing discourse as basic to ethics and upholding merit in the ancient Indian system to sustain it. He commends moral education to all professions, most of all to the judiciary using self-developed codes of conduct.

In this book **R.C. Mishra** provides challenging and practical advice to the general public and government officials to stand against the venerable activities of criminals which result is crucial offences and losses to human community. It is intended be an academic study of crime trends, criminal justice and crime prevention. This book is divided in to fourteen informative chapters.

**V.P. Srivastav** narrates that presently, the administration of justice in India gives the advantage in favors of the accused person by the set cardinal principle that no person shall be convicted of an offence unless his guilt has been proved beyond reasonable doubt. If it is the duty of the prosecution to discover and produce before the court, evidence of guilt of the accused and not seek to force the accused himself to speak of his guilt or produce evidence of his guilt. The criminals are dominating the justice system now-a-days. So re-examination of the total approach and link-up with objectives of planned development is highly soughing for.

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The book by **Ram Ahuja**\(^{12}\) is based on our empirical study, not only examines the role of youth subculture in criminality but also presents a new conceptual paradigm in explaining the etiology of crime. The study also examines the role of the police and the judiciary in youth crime and discusses some measures for containing the deviant behavior.

**Present study**\(^{13}\) aims to examine the nature and practice of the administration of law and justice in ancient Kashmir by comparing and corroborating the account of the regional authorities with the theoretical aspects of Brahmanical law as prescribed in the Hindu law traditions. It would evaluate as to how for the Brahmanical tradition served as a basis for the administration of law and justice in ancient Kashmir. The study would also indicate that while the Brahmanical conceptions were recognized as ideals by the regional authorities, departures from the ideals could not be very infrequently seen into practice.

The book by **J. S. Gandhi**\(^{14}\) (ed.) consolidates in one compendium both theoretical and substantive perspectives on the relationship between law, society and social change. The papers contributed by both Indian and foreign authors deal with a variety of problems such as those concerning social cultural facilities and hindrances in carrying out change through law or those concerning the relevance of theoretical models in explaining interactions and interactions between law and society. One message which clearly emerges is that whatever the nature of legal improvisations, the questions of context, specificity of the issue involved and the socio-cultural matrix cannot be ignored.

**B.L. Verma**\(^{15}\) describe that development of a legal system has, undoubtedly, proved to be an important subject of study as it explains and

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\(^{13}\) Anjali Kaul, Administration of law and Justice in Ancient India, New Delhi: Sarup & Sons Publications, 1993.
distinguishes the present form the past. In the complex modern era, its utility is further strengthened as it provides for comparative research and guidance to law reformers, legislators and scholars.

The study\textsuperscript{16} of crimes and rehabilitation of criminals in Assam and Meghalaya was of an exploratory nature designed to find out social and economic parameters of crimes in the two states. The convicts do not remain in prisons for ever; Sooner or later all of them come back to the society. So, the aim of this study was also to see how the convicts fit themselves in the societies to which they belong. Though the state governments publish crime statistics from time to time, they do not give any idea about the social circumstances leading to crime, factors contributing in making habitual offenders, etc. The work is a pioneering one and demanded careful handling of a grave social problem. The study tried to cover the socio-economic and developmental factors which contributed a social deviance and crime.

In this outstanding book the learned author studies in detail the history of the development of adalat system, development of civil law, development of criminal law, development of revenue law, development of personals laws and development of constitutional law with special reference to Ajmer-Merwara Province. In the end, the author presents the totality of the picture of landmarks of legal developments.

The author N. K. Indrayan\textsuperscript{17} states that law is an important instrument of governance. It is used in monarchy, oligarchy as well as democracy. In monarchy it comes from the king, in oligarchy it comes from a small group of persons, in democracy it must have the concurrence of the majority of the people. We have to see how far law in India enjoys the concurrence of majority? What meaning do the

people take by a ‘vote’ in elections to our legislatures? Relationship between law and public opinion had drawn some attention of Bentham. He has discussed the relation between legal sanction and popular sanction. He considered public opinion as an important ‘supportive structure’ both for legitimacy of law and for its effective implementation.

The study\(^{18}\) is based on an empirical study of the legal profession in Rajasthan, to the growing corpus of studies on the Indian legal profession. It is distinctive because it seeks to provide an account of the “social-structural dimensions” of lawyers and clients in their interrelationship and offers as part of this account a careful and imaginative analysis of the dimensions of “stratification, socialization, professionalisation, politicization and networking” of lawyers. The study illustrates all the strengths of the ‘liberal’ social science approaches to the study of professions. It explores social meaning of several central, but quite problematic, categories’ such as the ‘law’ and ‘profession’. It Endeavour’s to locate the legal profession not just within the growth of the Indian legal profession but within the wider historical setting of the development of Rajasthan.

The author\(^{19}\) has projected a political perspective of crime with daring references to our particular context. Likewise, his liberation from the usual aberrations of viewing crime as individual deviance and emphasis on the socio-economic system as criminogenic is a value loaded approach. The author says that we have more violence and sex crime and escalation of a combination of political and economic white collar crime, we cannot forget that the criminal justice system with break drown completely or may be dismissed as irrelevant unless we identify the mafia of many colours and bring them with in the framework of the study of crime prevention, punishment and reform. While a criminological work with an


Indian hue is not altogether new, this book has a stimulating quality and smell of life’s reality around us.

**V.A.C. Gatrell**\(^{20}\) in his edited book he examine some aspects of the history of crime and law in selected area and periods in Western Europe since 1500. They have in common a critical interest in three fundamental questions. How reliable and comprehensive are the records of crime upon which the historical must depends? Who was the variable social meaning of the acts labeled as crimes by law-makers and enforcers? And how changes in crime and the legal penalties attached to it reflected long term economic and social change? Each essay is self-contained, but also illustrates the diverse methods by which, in the cases with which they are concerned, these questions may begin to be answered. The book begins and concludes with seminal studies in which the editors seek to focus the diverse themes elsewhere illuminated within it.

**H.R. Khanna**\(^{21}\) describes the judicial system in Ancient India. History of our Judicial System takes us to the hoary past when Manu and Brihaspati gave us Dharam Shastras, Narada the Smrities and Kautilya the Arthshatra. A study of these memorable books would reveal that we in ancient India had a fairly well-developed and Sophisticated System of administration of justice. In broad outlines there is considerable similarity between the system then in Vogue and the system now in force. A civil judicial proceeding in ancient India is at present commenced ordinarily with the filing of a plaint as at present commenced ordinarily with the filing of a plaint or what was known as Purva Paksha be fare a competent authority.


The book by **T.K. Mann**\(^\text{22}\) is an humble attempt to present an introduction, to the growth and expansion of judicial system in the Punjab from the time of British Innovation to the present day. No attempt has so far been made to bring forward the history of judicial administration of Punjab up to date. The evolution of British judicial system was systematic and gradual and touched all aspects of human life, viz., economic, social and political. Hence, the system is discussed and divided into civil justice, criminal justice and supplemented by other miscellaneous aspects of judiciary, namely, separation of judiciary from the executive, bench and the bar and ministerial services. The work concludes by pointing out the defects of the judicial system and by suggesting the remedies which would eliminate the flaws that have crept into the system.

The book by **Alfred Cohn**\(^\text{23}\) probes methods used in training police, lawyers, psychologist, psychiatrists and social workers, as well as provides descriptions of their role in the justice system. The reader will find a detailed discussion of the procedural stages from arrest to sentencing. Trial procedures are described in terms of rules of evidence, psychological techniques and research used in jury selection. Witness reliability, argument effectiveness, and small group factors that affect jury deliberation are considered, in addition to the effects of intra-professional rivalries and conflicts on courtroom practice. Completing this coverage is information on post-conviction procedures, including pre-sentencing reports and sentencing alternative. Making use of much of the relevant information available, this book breaks significant ground in the relativity new area of forensic psychology. It satisfies the needs of lawyers, social scientists, police and others to


fully comprehend the interplay between psychological and aspects of American justice system.

**Elmer Hubert Johnson**\(^\text{24}\) in the fourth edition of his book shares his experiences as a parole officer and assistant direction of a state prison system. The book is divided in to five parts and twenty one chapters. From Crime and Criminology to the administrating of criminal justice, all topics have been deal with judiciously. In the last part role of community with regard to criminal justice has been taken up and space for reform is indicated.

### 1.3.2 Articles

In this **article**\(^\text{25}\) emphasis’ on settlement of dispute out of the court precincts and directly between the parties and without delay, trauma, trails and tribulations on formal dispute settlement procedure in courts popularly known as Alternative Resolution (ADR) procedure and the changing concept of the rights of women in the globalised world. The prime objective of studying domestic violence was to documents the process of identified women initiated community responses and to asses the impact of these response, thereby deriving indicators for evaluating such responses. The study also sought to build the institutional capacities of organization in the area of research, process documentation and evaluation. This provides a dramatic and non-negotiable impact indicator that shown the value of the process and the innovative forum environment. This is especially important as the visitor with which these forums were initiated is not that violence should end, but that the women should recognize and exercise their agency and rights a individuals.

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Nareshlata Singla\textsuperscript{26} describes that Alternative Dispute Resolution (ADR) is an alternative to the traditional process of disputes resolution through courts. In this process the disputes are settled outside the courts with the assistance of neutral third person and the proceedings are informal in nature. A third party helps the parties, who are having a dispute, to settle it. They are faster, cheaper and provide privacy to the parties. ADR provides options to the parties to settle their differences in a satisfactory manner. Whatever ADR is, it is quicker, cheaper and convenient to the parties. It gives people an involvement in the process of resolving their disputes that is not possible in a public, formal and adversarial justice system. The courts have been affected with the problem of large pendency of cases. Owing to large arrear, it takes many years for the case to be decided. Often the judgments are not satisfactory and cause inconveniences to both the parties. ADR has been found to the solution to the problems affecting the judicial system. Availability of ADR creates mere choices within the justice system. The alternative methods are not just a response to judicial shortcomings; it is also demand for higher standards of justice.

The article\textsuperscript{27} describes that the judicial delivery system still remains untouchable and unapproachable to the vast have-not humanity of the rural India. This is true at all the level from trial courts to Supreme appellate court. Everywhere, docket areas mounting, case disposals are slow and time consuming, overall litigative expenses, court free, lawyer’s fees and leisurely hearing in the courts have become daunting challenge. There is no possibility of litigants getting justice in reasonable time. This agonizing delay in dispensing justice has rendered the common man’s knock on the doors of justice a frustrating experience. Now the

\textsuperscript{26} Nareshlata Singla, Use of ADR Mechanism in the Settlement of Family Disputes, Rohtak: MDU law Journal, Vol. XV, Part-II (B), 2010.

time has arrived when we need to seriously introspect whether our judicial system has lived up to its expectation of walking the enlightened way by securing complete justice to all and standing out as the beacon of truth, faith and hope. It is imperative, therefore to introduce innovative and creative solutions by introducing mobile court to make justice accessible to remotest rural areas. In this brief paper an attempt has been made to analyse and investigate the functioning and working of mobile court in dispensing the justice along with the law and life in symbiotic manner for a better justice delivery system to the rural masses.

**Justice Dilip Raosaheb Deshmukh**\(^{28}\) explores alternative mechanism to reduce arrears of cases. The author maintains that awareness needs to be created amongst people about the utility of ADR and simultaneous steps need to be taken for developing personnel who would be able to use ADR methods effectively with integrity. He adds that in this way the widening gap between the common people and the judiciary will indeed be minimized.

**A. Lakshminath**\(^{29}\) in his article states that there were numerous laws in the ancient time, and each state had its own unique system of administration of justice and modes of punishment. Many of these laws were just an enhancement or an improvement upon existing social customs in the society. Crime and punishment naturally were the focus of these early studies. Different kinds of punishment naturally were the focus of these early statutes. Different kinds of punishments were inflicted based upon all the relevant facts and circumstances involved in the commission of the offence. The judge was expected to look at the social status of the offender and victim, the antecedents of the offender, the families involved, the

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occasion, place and time of the offence, and all other mitigating or extenuating factors wherever found to be so present.

J.R. Siwach\(^{30}\) in his article throws light on the pending cases in various High Courts, cases of their arrears and suggestions to the arrears. Among the causes, the author enumerates-increasing number of cases, antiquated judicial procedure, drafted legislation, inadequate number of judges, unfulfilled vacancies and long oral argument. Siwach suggests some measures, which include scope drafting of laws, filling of vacancies, short and concise judgements, stopping practice of writing individual judgement, written submission, restriction of appeal, and other procedural reforms.

Patrick Edobor Igbinovia\(^{31}\) begins with a general overview of the administration of justice system in the African Kingdom of Swaziland. The general overview was followed by a more detailed description of the major justice sectors, especially the police, courts and related agencies. The relevant characteristics, role, legal jurisdiction and types of cases handled by various courts together with the role of the police in crime detection, prevention and apprehension were analysed. The article emphasized disposition practices throughout the court system in Swaziland. In short, this paper examined the extent and nature of penalties and sanctions imposed by the courts in Swaziland during the period 1943 to 1968 on all indictable offenders brought before the Kingdom’s judiciary.

S. Venugopal Rao\(^{32}\) has drawn abroad projection of the probable dimensions of crime and identification of the major areas where restructuring of

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the system appears inevitable as a corollary to the compelling demands of the future. According to the author failure of the justice system lays its functional fragmentation which negates unity of purpose and action. Criminal law reform, organizational restructuring, optimization and enhanced allocation of resources, induction of managerial expertise in such of the segments make up only one part of criminal justice planning for the future. They will be of little avail if the system continues to be divided against itself. There is presently little coordination among the police, judicial and correctional services although changes in one have far reaching effects on the role and performance of other components.

1.4 OBJECTIVES OF THE STUDY
The main objectives of the study are as under:

1. To analyse the pattern of litigation in district courts.
2. To study the socio-economic background of litigants.
3. To point out the procedural complexities faced by litigants in district courts.
4. To search out the possibilities of compromise between the litigants.
5. To assess the satisfaction level of the litigants.

1.5 HYPOTHESES OF THE STUDY
The main hypotheses of the study are as under:

1. In district courts, criminal’s cases outnumber the civil ones.
2. Socio-economic background of litigants influences the pattern of litigation.
3. Litigation in district courts is complicated costly and often delayed.
Possibilities of compromise increases manifold with the help of Alternative Dispute Resolution (A D R) Mechanism.

Level of satisfaction is very low among the litigants regarding the procedure as-well-as decision.

1.6 METHODOLOGY OF THE STUDY

For the purpose of getting an insight into the pattern of litigation in Haryana, purposive study has been adopted. For this, district courts of Rohtak have been opted. Source list containing 150 cases have been availed randomly from office record of district courts Rohtak. The primary data have been collected from two set of respondents i.e. litigants and advocates through interview-schedule method with the help of separate designed structured questionnaires. For the secondary data, the researcher has relied on various books, newspapers, magazines, journals etc. The universe of the study includes 300 litigants and 100 advocates engaged in these cases. After collection, the data have been tabulated and analyzed according to the need. At last conclusions have been drawn. The drawbacks in the pattern of litigation of civil and criminals justice have also been pointed out and some suggestions regarding this are given at the end.

1.7 CHAPTERISATION

The present study has been divided into six chapters:

1. The first chapter deal is introductory and provides the research plan of the study.

2. In the second chapter, historical background of court system in India has been presented.
3 The third chapter deals with the pattern of litigation in district courts in Haryana.
4 The fourth chapter presents the socio-economic background of litigants.
5 The fifth chapter deals with the analysis and interpretation of data.
6 The last chapter concludes the study and presents the findings of the study with some suggestions.