Chapter I

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Preamble of the Constitution, which contains Solemn affirmation of all the ideals and aspirations for which the country has struggled during the British regime, declares: we the people of India resolve to secure to all its citizens, justice, social, economical and political. The term 'justice' is not defined under Constitution. American jurists Hans Kelson gave most suitable definition of justice;

"Justice is social happiness. It is happiness guaranteed by social order." 1

It means justice must be happiness in collective sense, that is to say happiness we must understand, the satisfaction of certain needs, recognised by the social authority, the law givers. In simple terms we can say that justice is exclusion of arbitrariness or ungrounded discrimination. Aristotle said, **"Injustice arises when equals are treated unequally and also when unequal are treated equally".**

Justice in its wide definition includes social, political, economical and legal justice. Such wide definition is useful to understand what the Constitution guarantees to its citizens. It is with this sense the word justice is used in the Constitution.

With the dawn of Indian independence the citizens started to

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1. A reference from the article by justice C. Kondain MP High Court in AIR 1976 Journal 98
pour in with their litigations in hope to get justice. Law implementing machinery started implementing law and simultaneously started to increase burden of justice delivery system. Cases piled in the court and people facing allegations of commission of crime remained detained in the jails waiting years together for the trial of their cases. Soon a chaotic situation arose.

J.K. Lieberman while commenting on the litigation frenzy Americans said,

"Ours is a law drenched age. Because we're constantly inventing new and better ways of bumping into one another, we seek an orderly means of dulling the blows and repairing the damage" 1

These observations squarely apply to India.

Apex Court taking cognizance of the situation then spoke through justice Bhagwati (as he then was);

" although unlike American Constitution speedy trial is not specifically specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of article 21 as interpreted in Maneka Gandhi's case. No procedure, which does not ensure a reasonable trial, can be regarded as, reasonable, fair or just"2

The Apex Court thus held that right to speedy trial is a

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2. AIR 1979 SC 1360
fundamental right. In spite of this recognition of speedy trial as a fundamental right repeatedly in many cases by the Apex Court, for various reasons, the pendency in the different courts in the country continued to pile up delaying delivery of justice. About 3 crores cases are pending in various courts in India\(^1\)

It is not that the efforts are not done to improve the situation. Judiciary tried several measures to reduce pendency, which include holding Lok Adalats, holding conciliation courts, directing stoppage of proceedings etc. The legislators tried their way by framing new statute of arbitration, by amending procedural laws, by establishing new courts etc. the situation however did not improve as expected.

It has thus became necessary to search for the causes of delay and after diagnosis of the causes suggest efficient remedies which will help judges, advocates, legislators and litigants compose a vibrant justice delivery system, which will make the sense that speedy trial is a fundamental right enshrined under article 21 of the Constitution.

The path is not so simple. The country started its journey with a well-researched Constitution, however somehow, at least in case of justice delivery system, our condition became that of a person who forgets his direction when he is half way through and stares desperately and bewilderly at the maize of

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\(^{1}\) the Economics Times of India 20th February 2001
the roads ahead of him. As justice Krishna Iyer says, we reached a grim situation. He speaks;

"The whole system is in the intensive care unit and creative surgery without looking back to the musty precedent be now tried."  

While suggesting remedies we also have to keep in mind a proverb, "Justice hurried implies justice buried". Speedy disposal of cases should not be construed to mean that cases should be disposed of quickly to the detriment of Justice. Considering the situation it can be said that primary responsibility will be on the Judges to see that justice should be imparted quickly but at the same time judiciously. At the same time, the lawyers should have to develop in them professionalism, uprightness and technical abilities to handle computers and other electronic gadgets. Above all the society has to develop a sense to coexist reducing the chance of confrontation and thereby reducing the chances of litigation.

Along with it the society has to develop ways and means to settle the disputes and learn to utilise its precious time for developing themselves and ultimately to mankind. No doubt this will take a long time, but this new social order has to come in existence as a new era in the development of the human society. This research is a step forward in the direction of new social order.