CHAPTER 1
INTRODUCTION

Man is a social being. The society is characterized by the interdependence of men. This interdependence serves various purposes and needs. But it also gives rise to a conflict of individual interest with social interest. To settle this conflict certain norms and rules are made by the society. These rules are enforced by some kind of sanctions which settle the conflict under the wider wings of equity, justice and good conscience which are and have been gradually recognised by the state. The intervention of the state through its organs is necessary for fair play. It is at this stage that the quest for justice becomes significant.

The nations which do not ensure to its people justice without delay are destined to doom and loose their identity sooner or later. In our country, the Justice Delivery System has reached on the verge of collapse. The people are dying waiting for their causes to be heard and
decided. The above quoted verse re-affirms that we, the highly placed persons must do our duties and setup those benchmarks which could take the whole human kind as well as our nation on the path of progress and prosperity. This reminds us that 'we' constitute a privileged class because we have been and are being taught at the cost of millions of people of this country. Therefore we owe a duty towards firstly the whole mankind, secondly this nation, thirdly the society and the family and then comes our own individual interests. It is in this sense that we must try to become nation assets rather than national liabilities.

The topic of the present research is an attempt to study the present state of affairs of the Justice Delivery System, its problems like the biggest problem of delay, expensiveness being the reason of docket exclusion, uncertainty and lack of infrastructure etc., the identification of causes and concrete suggestions so as to ensure the true spirit of the Preamble of the Constitution of India.

1.1 The Problem Profile

Justice has been recognized as an ideal which has been the undying craze of Kings and commoners, philosophers and poets, saints and statesmen, social reformers and thinkers, judges and jurists for establishing a humane society founded on liberty and equality, universal harmony and peace. The pursuit of justice is a fascinating exercise, which directly or indirectly contains within it the whole plethora of jurisprudence and the panoramic insights of world's philosophy and religions. Like the modern constitutions the codes of ancient people vividly reflect their commitment to justice. The great King of Babylon Hammurabi (2124-2083 B. C.) proclaimed 'to establish justice in the world to destroy the bad and the evil, to stop the strong exploiting the weak, to develop knowledge and welfare of the people.'
‘Justice is the greatest interest of man on earth. It is the ligament which holds the civilised being and the civilised nations together’. According to John Rawls, “Justice is the first virtue of social institution, as truth is of systems of thought…” ‘Fiat justitia ruat coelum’, ‘let heavens fall, justice had to be done’ has been one of the most important quests of human society ever since its birth. The day men have begun to reflect upon their relations with each other and upon the vicissitudes of human lot, they have been preoccupied with the meaning of ‘justice’. In *Corpus Juris Secundum*, justice is defined as:

“The dictate of right according to the consent of mankind generally. The conformity of our actions and our will to the law; that end which ought to be reached in a case by the regular administration of the principles of law involved as applied to the facts. In a judicial sense, it is defined as exacting conformity to some obligatory law”.

The opening paragraph of Justinian’s Institute declares, ‘justitia est constans et perpetua voluntas jus, suum cuique tribuendi’- justice is the constant and perpetual will to give everyman his due. Justice is the quality of being just and fair to all the individuals in the group. It seeks to give everyone what is due to him. What is due cannot be ascertained by absolute standards. The standards change depending upon time places and circumstances. According to Krishna Iyer J., ‘it

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7 Ibid.
also depends upon the ethos of political system, the property relations, governing a given society. It does not mean only a just distribution of the material goods of life, it deals with the reasonable requirements of body, mind and spirit. It takes in the means and the end, the process as well as the product, it seeks to meet and justice through just means'.

'The idea of 'justice' is so ancient that everything has been said about it and it is so modern that it constitutes an ever-changing context of contemporary society'. The whole evolution of mankind and the various system constituted for its growth, development and welfare can be linked with the evolution of justice.

It is for these reasons that the state gives due regard to the institution of 'dispensation of justice'. Fair dispensation of justice is a necessity in order to keep the deviant behaviour of the people under control. Justice Delivery System is the backbone of a civilized state whereby justice is administered to the people. Therefore it needs to be cheap, certain, quick, effective and efficient lest it should force the people to come out for real war.

Blackstone a renowned jurist delivered a series of lectures at Oxford about two centuries ago. He examines the purpose for which courts were set up. He says people go to law and give up their private war for obtaining what we call their "right". Every well-organised modern society designates some persons who will settle most of the dispute of the kind, which are likely to breed violent strife. Such an official dispute decider is what we meant by a court. If we look behind the bench we fill a police man, signifying court justice by the sword as well as the scaves. Leonard Boore, a successful practising trial lawyer, says, "Litigation resembles warfare. Opposing counsels are charged with the responsibility of so conducting their campaign that ultimate

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9 Supra note 1 at 2.
victory will result. In 1906 a French Judge De La Grasserie said, "legal process is another kind of war. It is a mimic war". The parties to the court fight do not use physical weapons, their weapons are merely verbal and are implements of persuasion, meant for twisting the mind of the judge so as to obtain a favourable decision. The war may be to seek possession of land or securing a sentence of imprisonment on the alleged murderers of a deceased. It may be a war between two persons one of which has defrauded the other of a huge amount, or a war between the children of a deceased father seeking to enforce their right to secure the property of their ancestors. It may be a war between husband and the wife whose marital relationship having run into troubled waters seeks land ashore. It can be a battle for a claim of compensation between the dependents of the deceased who have been deprived of the love and protection, help and support of their bread-earners and the wrong doer who knocked him down. In many cases, it is a right between an employer seeking his right of hiring or firing at will as the master and the employee complaining of malafide, vindictive and discriminatory action of the profit hungry heartless employer. In all these cases, the long delay is of years and the effort is not to end but to prolong the war and postpone enforcement of a cease-fire. Delay is like a hole in the doughnut. People indulge in the mimic warfare to avoid bloodshed and on effective verdict from an impartial empire. If the empire makes this process strenuous, dangerous, uncertain and unending than the real warfare then people are bound to opt for the real thing.

In our country, under the Constitution of India, the judiciary is the protector, guardian and the prime institution to administer justice. The Preamble to the Constitution of India clearly depicts the aims and the aspirations of the people of India. It is unfortunate that even after more than 64 years of independence, the goals for which our freedom fighters fought and shed their blood, have not been achieved.
Justice delivery system is the backbone of a society and nation. It is the justice delivery system which protects the people, enforces their rights and saves the social fiber from being distorted. Therefore it is necessary that the dispensation of justice must be effective, efficient and inexpensive so that it could reach to all sections of the society, particular those who are exploited, downtrodden and neglected. The defect, deficiency and delay in the justice delivery system at any level for whatever reason leads to chaos and wide-spread outrage of the fundamental spirit of the human conscience. Indian justice delivery system has been suffering from various problems. The most important of these is the cerebral emorhage of delays in the dispensation of justice because it strikes at the root of the existence of our nation. There are shockingly an mind-boggling proportion of delays and deaths of justice in our country for a long time particularly since the making of the Constitution.

The delay in dispensation of justice is not good for any society. When justice is not done promptly, it encourages people to adopt unethical and illegal means to settle their disputes. If adoption of these unethical and illegal means for the settlement of disputes, becomes the mode of operation, it would ultimately lead to an anarchy and chaos in the society. Our country is on the verge of this kind of disastrous situation. The maintenance of law and order and dispensation of speedy justice is therefore sine qua non for an orderly society. The long delays in the disposal of cases have contributed to mounting arrears of cases at all levels of judiciary in our country. The pendency of cases is constantly on the rise and is becoming unmanageable with each passing day. A bare glance at the increasing trend in pendency of cases is sufficient to portray the crisis with the judicial system. It is no exaggeration to state that our Justice Delivery System is cracking under the oppressive weight of the arrears and delays, which calls for its revamping in the proper perspective.
time to time several Commissions and Committees have studied the problem of arrears and delay in courts. The augmentation and reforms whenever made in the system has affected marginal improvements. However the rate disposal of cases could never match their institution and consequently the arrears are constantly on the increase. Now the situation has taken serious turn and warnings have started coming from the each quarter, to the effect that more delay in not attending to the problems of arrears and delays can prove disastrous for the whole of Justice Delivery System.

Justice K.G. Balakrishnan, the then Hon’ble the Chief Justice of India in an address on the occasion of Law Day on 26-11-2008, gave the figures of pendency of cases, while calling for action of courts to act as agents of social change and emphasized the need for judicial reforms. The pendency of admission and regular matters in the Supreme Court as on 1-11-2008 was 29,706 and 19,557 respectively. Thus, the total pendency of cases in the Supreme Court as on 1-11-2008 was 49,263 cases. The total pendency of civil cases in the High Courts as on 30-9-2008 was 30,81,053 and that of criminal cases was 7,54,654. Thus, a total of 38,35,707 cases were pending in the High Courts as on 30-9-2008. The largest pendency of cases was in the High Court of Allahabad where 8,87,402 cases were pending whereas 4,46,975 cases were pending in the Madras High Court as on 30-9-2008. The subordinate courts were having 74,92,561 civil cases and 1,88,97,279 criminal cases were pending as on 30-9-2008. Thus, a total of 2,63,89,840 cases were pending in the subordinate courts as on 30-9-2008.

As per statistics in ‘Crimes in India 2002’, at the end of the year, 82.2% IPC cases and 53% of cases under the special local laws remained pending for trial in various courts in the country. This signifies the pendency in trial of criminal cases at various courts in
the country. It is evident that the trials conducted by the criminal courts have not increased and matched in relation to higher disposal of the police over the years.

Despite various sources, the statistics are also available from the tables set out by the Justice Jagannath Shetty Commission (First National Judicial Pay Commission, 1999); Indian Law Institute Project Reports and Annual Reports of Ministry of Law and Justice and articles published in journals and newspapers.

The figures show that there are a large number of cases pending in civil as well as criminal courts. The situation calls for introspection by all the organs of the state to take an immediate stock of the situation. The whole spectrum of criminal jurisprudence is ordained to perceive and permeate the interests of the accused of crime and to neglect the victim as a ponderous necessarian. Thus unmindful and untoward trendy threat towards the accused has left the complainant the “unknown martyr” of crime.

Our whole allegiance of thought and action ought to be victim oriented rather than the punishment or welfare of the accused. Because a criminal by his act of killing, assault, mutilation etc. not only disables one person but many fold of persons around him. He not only causes the psychological trauma and frustration to the victim but also engraves a stigma of degeneration on his forehead, which creates a fear of mistrust in humanity and loss of trust in the justice delivery system of the state.

Further, numerous procedural technicalities, endless delays in the conclusion of trial, rigid and impracticable requirements and leniency to endure the in redibly presumptuous interest of the accused the garb of humanity and fundamental principles of fair trial, in total ignorance towards the loss caused to the victim, add fuel to the fire and thus results into gross injustice to the victim. Unpragmatic and
inadequate provisions of restitution to an innocent law-abiding tender citizen, paradoxically make a telling comment at our entire socio-legal metamorphosis.

Even though the right to access to justice has been held to be a fundamental right. Still the illiterate and ignorant masses in our country, find it difficult to get effective, inexpensive and in-time redressal of their grievances. Moreover, justice, as assured by our legal system must not restrain itself to the black and white provisions of our law books, but must practically endeavor towards the curtailment of crime and prevalence of justice.

1.2 Research Hypothesis

Our research is based on the universally known and acceptable fact that the delay in the justice delivery system shocks the conscience of the victim and the law abiding citizens of a nation, encourages the law violators to hold the entire system to ransom. The uncertainty of law and the cost of the invoking the recourse of law further add to the woes of the victims. This ultimately results into social breakdown which takes us to the time when the people resort to unconstitutional means of settling their scores and even the umbrella of contempt becomes unable to control them.

There is a direct relationship between the efficiency of justice delivery system and the protection, preservation and enhancement of national interest. It is always in the national interest that the rights of the people are protected, remedied when violated and the people are moved towards the service of social, economic, political and judicial justice. Therefore our research is focused primarily on the following issues:

(i) To study the existing legal systems and its problems;
(ii) To identify the reasons behind the problems including the problem of laws' delays, lack of effective access to justice, and the uncertainty of decision making process;

(iii) To study the existing national and international laws, instruments and conventions and the judicial pronouncements in the context of laws' delays;

(iv) To understand the consequences of delays in the delivery of justice;

(v) To suggest effective ways and means to make justice delivery system expedient and effective.

1.3 Research Methodology

The methodology of the research conducted is basically doctrinaire. The lack of access to justice and the existing uncertainty in court decisions has also been examined. The examination and analysis of the relevant provisions under the national and international laws, international conventions etc. has been done. The secondary data analysis includes case law and literature available in the form of published articles, debates, discussions and commentaries, statistics available from different organised and general resources in the form of tables, graphs and pictorial representation.

1.4 Plan of Study

The present study has been divided into the following chapters:

Chapter 1: This chapter makes us conversant with the necessity of inter-dependence of man, conflict of interests and the quest for justice of the whole humankind. It gives us a glance of the problems particularly of laws' delays, the lack of effective access to justice and the existing uncertainty in court decisions. It also throws light on the importance and purpose of our study.
Chapter 2: This chapter deals with the concept of justice, its kinds, various types of legal systems and their distinction. The doctrine of public interest and the desire of the seekers of truth have also been emphasized.

Chapter 3: This chapter makes an attempt to depict the gradual emergence of the creation of the institution as a whole and development of the procedure of trial, constitution of the courts, crimes and punishment during the Hindu, Muslim and Mughal periods which passed through different currents of time. And finally, it brings the country into at the stage when the Britishers emerged on the scene of Indian soil as merchants. The chapter also deals with the different Charters passed by the Britishers to regulate their conduct of the so-called business in India. Thereafter the chapter depicts the establishment of the High Courts. It also discusses the developments in the post-1858 era which basically initiated the decline of the Britishers and was a giant step towards the recognition of the self-governing institutions and the role of Indians as Indians. Thereafter, it also touches the post-independent scenario and the subsequent developments.

Chapter 4: This chapter deals with the provisions contained in various national laws and international instruments so as to understand and see the efforts and concern of the community of mankind as a whole. In this chapter various fundamental provisions contain in the Constitution of India in the light of various judgements of its Supreme Court have been analyzed. The chapter also covers in its brief ambit the international thrust through the United Nations and the international covenants of the need to have an efficient system and the protection of the rights of the people. It also touches the importance of speedy justice as prevailing in England, America and Bangladesh.
Chapter 5: This chapter through important flood light on the causes of delay. It enable us to understand the reasons behind delays at levels of legislative, judicial and executive. It concentrates on the infrastructural problems, the mind-sets of the litigants, police, prosecutors, government, lawyers etc. It also attempts to touch the weaknesses of human min in all these capacities including the plague of corruption. It also conained the views of various persons relating to the Justice Delivery System in different capacities, regarding the reasons behind delays.

Chapter 6: This chapter provides us valuable source of information in the form of statistics as to the disposal of cases particularly by the court both in tabular and graphical forms. This chapter by and large is based upon the statistics provided by the National Crime Record Bureau. It may not be able to prove anything but it can certainly be of some help for us to draw important inferences regarding the state of affairs. One of the most important features of this chapter is the analysis of duration of trials in different subordinate courts. The chapter itself speaks volumes of truth as to the malaise of delay in the legal process in our country.

Chapter 7: This chapter is an important feature of the work in the sense that it deals with that class of people who cannot afford the price for asserting and enforcing their rights through the justice delivery system through the institution of the judicial courts on account of ignorance as well as lack of financial resources. It is this part of the system which has been the subject-matter of great criticism of all. That is why the concept of ‘non-access to justice’ also described as ‘docket exclusion’ has received huge importance in judicial policy making. It is just like the concept of reservation in our country in the sense that the poor and under-privileged are not able to make available the services of the lawyer to represent themselves, and most of them are ignorant. Therefore, the constitutional cushion of
protective discrimination has been extended to them in the form of Legal Aid on fulfillment of certain conditions firstly by the judiciary and then by the legislature. It also discusses the history of the concept as well as the consequences of the non-access to justice. The chapter also attempts to make a functional analysis of the existing state of affairs.

Chapter 8: This chapter deals with another problem of justice delivery system i.e. uncertainty/unpredictability of law i.e. court decisions. It makes an attempt to analyse the concept of certainty of law, its relevance, scope as well as its impact. The researcher tried to portray the importance of the realist school of thought and its reality, the nature of Indian State with a significant shift from traditionalism to modernism and the concept of welfare state, the effect of developments till independence, and the legislative changes. This chapter contains a beautiful account of the impact of political developments on the judicial pronouncements in the form of the evolution of basic structure theory, the shift from 'procedure established by law' to 'due process of law', and the like. The creative role of judges like Lord Denning, Justice Cardozo, the creativity and the emphasis on certainty by the Supreme Court in the 21st century, have been portrayed in brief.

Chapter 9: This chapter contains a large number of suggestions for reforming laws and various agencies of Justice Delivery System. It also emphasizes for the introduction of some of the new concepts like witness protection programs, shifting system in the courts as well as for the betterment of alternate dispute resolution mechanism. The most striking feature of the chapter is the need to formulate on the basis of principles discussed therein and to adopt 'damnum' principle which has been innovated after analyzing the personal experiences of the researcher and feeling the pulse of the needs of time. The researcher is of the firm view that the principle, if followed, on the guidelines given
therein, would completely change the present scenario of the Justice Delivery System in India.

1.5 Importance, Objective and Scope of Our Study

After more than 64 years of independence, we need to retrospect our past in order to plan for future to know and analyze as to what we have achieved and what we have lost, what we can retrieve and what we can still save. It is in this perspective that the present study assumes alarming significance for it contemplates the social frustration and the national unrest that has been caused and that would be contributed if the present state of affairs is allowed to continue.

The increased lawlessness in the society can be witnessed from the following table, which clearly depicts the number of crimes committed in 2002 in a more practical manner:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Startling and Ind Boggling Facts about Crime Picture in India in 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>4 murder cases every hour.</td>
</tr>
<tr>
<td>2.</td>
<td>3 attempt to commit murder cases every hour.</td>
</tr>
<tr>
<td>3.</td>
<td>10 culpable homicide not amounting to murder cases a day.</td>
</tr>
<tr>
<td>4.</td>
<td>2 rape cases every hour.</td>
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<tr>
<td>5.</td>
<td>3 kidnapping and Abduction cases every hour.</td>
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<tr>
<td>6.</td>
<td>1 dacoity case every hour.</td>
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<tr>
<td>7.</td>
<td>2 robbery cases every hour.</td>
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<tr>
<td>8.</td>
<td>8 riots case every hour.</td>
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<tr>
<td>9.</td>
<td>1 dowry death case every hour.</td>
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<tr>
<td>10.</td>
<td>4 molestation cases every hour.</td>
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<tr>
<td>11.</td>
<td>1 sexual harassment case every hour.</td>
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<tr>
<td>12.</td>
<td>132 all other IP crimes every hour.</td>
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<tr>
<td>13.</td>
<td>7 deaths due to negligence cases every hour.</td>
</tr>
</tbody>
</table>

- 14 -
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Startling and Mind Boggling Facts about Crime Picture in India in 2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>14.</td>
<td>6 cruelty by husband and relatives cases every hour.</td>
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<tr>
<td>15.</td>
<td>30 hurt cases every hour.</td>
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<tr>
<td>16.</td>
<td>28 thefts cases every hour.</td>
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<tr>
<td>17.</td>
<td>39 property crime every hour.</td>
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<tr>
<td>18.</td>
<td>17 crimes committed against women every hour.</td>
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<tr>
<td>19.</td>
<td>1 crime committed against children every hour.</td>
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<tr>
<td>20.</td>
<td>17 crimes committed against women every hour.</td>
</tr>
<tr>
<td>21.</td>
<td>1 crime committed against Scheduled Tribes every hour.</td>
</tr>
<tr>
<td>22.</td>
<td>5 cheating cases every hour.</td>
</tr>
<tr>
<td>23.</td>
<td>7 economic crimes every hour.</td>
</tr>
<tr>
<td>24.</td>
<td>11 burglary cases every hour.</td>
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</tbody>
</table>

The object of our study is to depict the problems of the common man who are illiterate and not having adequate financial resources and their inability to approach the court, the devastation which the delay and uncertainty in justice delivery system can cause and also the practical solutions at various levels legislative, judicial and executive; individual and group levels etc.

"An educated man in the real sense of the term should scrutinize all the sources of law with the eye of knowledge and should perform his duties in conformity with the injunction flowing from Vedas". — Justice M. Rama Jois, "Ancient Indian Law Eternal Values", Manu Smriti, 20 (Universal Law, Delhi, 2002).
This study attempts to cover each and every agency of the Justice Delivery System so as to analyse their respective role and gives a clarion call to all for performing their duties in accordance with the principles of truthfulness, dedication, honesty and the spirit of nationhood.