1 Introduction
Introduction
INTRODUCTION

The present piece of work is an attempt to explore and evaluate, an important aspect related to the actual functioning of the writ jurisdiction of the High Courts. It specifically relates to the admission of writs after motion hearing. This facade of admission is different from the normal meaning attached to it wherein the writs are simply accepted for adjudication after preliminary hearing. But in the case of admissions under study, writs are admitted for an indefinite period without indicating the next date of hearing: the writs remain pending for years and even decades. The present study attempts to explore the various aspects of admissions, including particularly their impact and implications, with special reference to the civil writ jurisdiction of the Punjab and Haryana High Court. The present work involves an empirical study of about one thousand judgements of the High Court, delivered in civil writ petitions, mostly after a period of ten years or more of their admission. Our endeavour is to delve deep into the matter and identify and analyse the impingement of indefinite admission on the concept of the writ jurisdiction itself, which is constitutionally designed to produce outcome instantly.

To accomplish this work more than 900 judgements delivered by the Punjab and Haryana High Court in admitted civil writ petitions during a period of ten years, have been studied (Selected cases out of these judgements have been incorporated for individual case study). These judgements mostly concern the matters, which remained under admission for more than ten years. These are mostly unreported judgements, and are available in the main library of the Bar Association of the High Court. After going through these judgements, the major trends of this form of admission were identified. On the basis of this study a questionnaire, comprising of more than forty questions, was prepared. It was circulated among two hundred practising lawyers of the High Court to obtain their response to these questions. Slightly more than one hundred advocates responded to it and the same has been incorporated in the study. To examine these trends from various angles about 100 judgements of the Supreme Court of India touching on various issues,
identified during this study, were gone through. These judgements basically related to the writ jurisdiction and various aspects attached to the law of writs. Apart from it, various books and other material related to writ jurisdiction and the related law were also consulted. This study could be further strengthened and substantiated by putting in some consolidated data from the High Court, however, the same could not be obtained, inspite of repeated efforts.

The struggle for independence was indeed a painful story. The prolonged foreign yoke was a constant torture to the people; still that could not subdue the spirit and exuberance of the teeming millions. We eventually became free. In our freedom, we dreamt of making India 'a Sovereign, Socialist, Secular, Democratic, Republic' and to secure all its citizens- justice, liberty, equality and fraternity alongwith dignity of individual and integrity of the nation.

This is what is duly reflected in the very preamble of the constitution of free India. Our founding fathers attempted to realize there the hopes and aspirations of the people in the very body of the constitution. This they did after a close study of the major constitutions of the world and incorporating the best available in the Indian constitution.

The fundamental rights as envisaged in part III of the constitution are the outcome of the spirit of the freedom movement as well as the hopes and aspirations of the people. These rights are specifically incorporated in the constitution to ensure the basic human rights, which could be enjoyed as a matter of right. Their applicability and enforcement are not left to the whims and fancy of any individual or authority, but the same are made legally enforceable at the instance of individuals affected. That is why these rights are made justiciable. It is their justiciability that makes them instantly efficacious through the judicial mechanism of writs. This aspect of efficacy of justiciability under the writ jurisdiction of the High Court forms the core-basis of the present study.

The provisions of writ jurisdiction under Article 32 (which itself is a fundamental right for the exclusive enforcement of other fundamental rights) and Article 226 have been envisaged under the constitution to add efficacy to
the enforcement of constitutional rights. The provisions, empowering the issuance of various writs by the Supreme Court and the High Courts, were borrowed from the British tradition for their time-tested effectiveness. The powers under these provisions are vested in the higher judiciary, called the courts of records. Such powers are meant usually for the enforcement and protection of fundamental rights. However, to make it more expansive, the powers of the High Courts under Art. 226 are extended to the protection of all constitutional rights. In fact, the expansive jurisdiction conferred under Article 226 has augmented the status of High Courts.

The frequency of invoking the writ jurisdiction of the Supreme Court and the High Courts has been tremendous after the independence. The people have become well aware of their new rights, after independence and as and when there is any encroachment or violation of these rights, they move the courts. Thus the number of such writs has continuously increased. The fundamental rights are not only protected but also given a new dimension. The active participation of the court expanded these rights to the level and extent, which perhaps could not have visualised even by the founding fathers of the constitution. In course of time, the scope of this jurisdiction increased manifold, seeking or providing relief in diverse situations.

The purpose of the writ jurisdiction is to ensure speedy and efficacious justice. But with the passage of time its efficacy has been greatly affected by delay involved in the disposal of the writs by the court. The 'admission' of writs for indefinite period in the High Courts has become a major obstruction in the delivery of justice. The relief seekers in such 'admitted' writs have to wait for 15-20 years. The heavy load of work does not allow the courts to hear these matters at an early date. The interim orders passed before the admission of writs, normally continue during this period. Thus this lengthy period of admission results in various consequent impacts.

The main thrust of the present study is to evaluate the nature, scope and result of indefinite 'admission'. The evaluation has been made with reference to the writ jurisdiction in its historical perspective. The quantum of relief being sought under this jurisdiction, if taken as an index, would prompt us to say that the efficacy of fundamental rights is proportionate to the efficacy
of writ jurisdiction. The relief sought both in terms of quality and quantity, would depend, to a great extent, upon the efficacy of the remedy itself. Therefore, the quality and quantum of real relief would determine the efficacy of writs. This means, if the courts were able to provide the speedier justice, that itself would make the rights more meaningful. Long ‘admission’ means undue ‘delays’ and this itself strikes at the very core purpose of writ jurisdiction. Issues of our concern in the present study are: whether aggrieved violation of fundamental rights and other legal / constitutional rights can wait for the remedy for decades? Whether these rights would remain worth relishing after such a long period? Whether it is not a suspension of the spirit of guarantee available under Art. 32(4)? Whether it is a dilution of constitutional provisions under Art 226? Whether the constitution allows such discretion to the High Court to adjourn the writs indefinitely in this fashion? Whether it amounts to the negation of purpose of this extra-ordinary jurisdiction? Whether it is against the principles of natural justice? Whether it is against the basic fabric of the constitution? Whether it results in multiple evil effects? Whether it is against the doctrine of rule of law? Whether it whittles down the fundamental rights and other legal rights? Whether the results of such admission affect both the individual and the society? Whether the legal wrongs sought to be rectified in the admitted writs, can be allowed to continue indefinitely? These and certain other issues have been examined and discussed in detail in this study. For this purpose, the nature and scope of writ jurisdiction in the backdrop of the history of its origin, has been discussed at length. Its basic purpose and its scope as envisaged in the constitution, in the background of the overall scheme of constitution, have been examined. Specially, the element of expediency and speed in the grant of relief under writ jurisdiction has been the main thrust of this study. This has been critically examined in view of the various judgements of the Supreme Court, specially delineating the nature and scope of its jurisdiction, and its applicability to the rights of the people.

In the light of this background of the writ jurisdiction the concept of ‘admission’ under study has been discussed along with its genesis. An attempt has been made to distinguish the scope and implications of this
concept of admission from the normal meaning of admission in legal terminology. The procedural difference between these two different forms of admission has been explained with reference to the Rules framed by the various High Courts in this regard, including that of the Punjab and Haryana High Court. The salient features of the concept of admission as envisaged in the High Court Rules have been identified and an attempt has been made to draw a distinctive contrast between these two forms of admission, as far as their impact is concerned. The source of power of admission under study (indefinite admission) has been analysed and its scope has been examined in the light of the High Court rules available in this regard. This concept of indefinite admission of writs has been further analysed in the light of the overall constitutional framework and specifically in view of the basic framework of the constitution.

While pursuing it further, the main trends of the concept of admission under study have been identified and discussed. After going through the judgements delivered by the Punjab and Haryana High Court in long admitted cases, the various trends attached to this ‘admission’ were identified and the same were circulated to the members of the bar in the High Court in the form of a questionnaire, to ascertain their response to these trends. The same has been incorporated in this study along with the detailed analysis of these trends.

The main thrust of this study is the impact and implication of this indefinite admission on the final outcome of admitted writs. It forms the major part of this study. It has been discussed at length in a separate chapter under the head-‘Impact and Implications of admission’. Since this work has been accomplished through an empirical survey of the judgements of the High Court in admitted writ petitions, the results have been substantiated with practical examples of individually decided matters. Therefore, to give systematic and comprehensive picture, the entire chapter delineating the implications of indefinite admission has been divided into nine subheads and each subhead explains and analyses a particular implication. Moreover, each subhead has been further presented in two sub-parts. After giving a brief introduction of the particular implication, the first sub-part contains the study of
individual cases where the particular implication, is clearly reflected. The second sub-part comprises of the critical analysis in the light of various judgements delivered by the Supreme Court of India from time to time.

In the first sub-head of this chapter the discretion exercised by the High Court in admitting the writs indefinitely has been evaluated in the light of its practical outcome. The tendency of this discretion resulting into discrimination has been critically examined. The next sub-head deals with delay and denial of justice. Since the main malady of this indefinite admission is the delay involved in disposal of the writs, its impact has been discussed in detail, substantiated by individual case study. It reveals how delay actually denies justice to those who seek expeditions remedy by way of writ petitions. The next sub-head reveals the tendency of the High Court not to decide the writs conclusively and to remand it back to the competent authority even after an admission of 15-20 years. Similarly, writs are dismissed on the grounds of preliminary issues, even after long admission. This aspect, along with various consequences attached to it, has been discussed at length.

It further reveals how the long admission of writs results in undue advantage to one of the parties to the writ. In this process the impact of admission on various government decisions and polices has been analysed with the help of individual case study.

Since the admission without further date of hearing results in denial of timely opportunity of hearing, it tends to violate the principles of natural justice. This aspect has been discussed in the next sub-head. The impact of indefinite admission has been discussed within the scope of the principles of natural justice.

Since the long admission of writs leaves the issue unsettled and unclinched, it results in an element of uncertainty among all the affected parties. The impact of this uncertainty, created by such admission, has been discussed at length including its impact on individual and society under the next sub-head.

The long pendency of writs also provides an opportunity to the unscrupulous elements in the society to exploit the opportunity by way of
unfair practices and means. This aspect has been dealt with in detail. The debilitating impact of such admission on the efficiency of the various agencies of the government has also been discussed herein.

It further reveals the scope of legal and administrative complications attached to this concept of admission. The decisions of the High Court in writs after a pendency of 15-20 years result in various such problems. It has been discussed in detail, how the parties to the writ petition are placed in a non-retractable situation by a decision of the High Court after such a long period.

The last part of this chapter reveals a positive aspect of the writ jurisdiction of the High Court wherein the matters are decided without such admission by the motion bench itself. This is a ‘Cherished Contrast’ in comparison with the admitted writ petitions. The instant decision of the writs by the High Court, grants the true glow and glamour to this extra-ordinary jurisdiction. It is free from the maladies attached to the admission. It reflects a situation, which may be cherished by all concerned.

Thus this "Cherished Contrast" provides wholesomeness to the study and it depicts a strong probability and potentiality of efficacy, which the system could attain and should attain. It depicts the true meaning of writ jurisdiction and the true spirit of the constitution, which it espouses.

In the end, on the basis of the defects and abuses of this concept of admission, some remedial suggestions have also been attempted. It basically denotes the efforts, which may result in a positive trend in the system. Certain steps have been proposed to be taken to improve the procedure and process with the use of latest information technology. The internal coordination and proper legal assistance etc. within the system have been identified as a few areas where special efforts are required to be made. These remedial suggestions may not be called exhaustive; it is just an attempt to draw an attention to the problem areas where special efforts are required to be made.

On the basis of this analysis the shape of this study was finally framed. It may not be claimed as a final word on the subject; however, an attempt has been made to explore the concept of indefinite admission in its various facets and dimensions. Further attempt has been made to see it from different
angles and to identify the impact, it is causing on the justice delivery system. This study would reveal how writ jurisdiction, which is one of the major constitutional provisions under Art. 226, is being not only underplayed but in ‘admitted’ writs it is almost being reduced to negation through long admission. To that extent the efficacy of writ jurisdiction, which was a potent constitutional weapon for the protection of rights, has been damaged. The impact on the individual rights on account of this delayed decision, resulting into denial of justice, is not only restricted to individuals but also is fraught with multi-facet consequences.

The outcome of the individual cases discussed here alone may reflect a lot regarding the damage being caused to the entire justice delivery system. It is hoped that this piece of work would succeed in its purpose and intent, if it could convey the meaningful message to those, who are responsible to upgrade the justice delivery system.