Chapter One
INTRODUCTION

1.0.0. INTRODUCTION

Justice is a concept of rightness, fairness based on ethics, values and rationality. Laws made by a sovereign body strive for ensuring justice to various sections of the society. Courts are established for eradicating injustice by punishing violation of these laws and in some cases providing remedy to aggrieved person (NCERT, 2010).

Access to Justice

“Access to justice”, in its general term, means an individual’s access to court or a guarantee of legal representation. It has many fundamental elements such as identification and recognition of grievance, awareness, legal advice or assistance, accessibility to court, claim for relief, adjudication of grievance and enforcement of relief; of course, this may be the ultimate goal of a litigant public.

The concept of ‘access to justice’ has two significant components. The first is a strong and effective legal system with rights, enumerated and supported by substantive legislations. The other is a useful and accessible judicial/remedial system easily available to the litigant public (Pradeep, 2010). Access to justice rests on fair treatment.

Access to justice and fair treatment

- Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by the national legislation, for the harm that they have suffered.
- Judicial and administrative mechanisms should be established and strengthened where ever necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
- The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.

Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate, to facilitate conciliation and redress for victims. (U.N. Declaration of Basic principles of Justice for Victims of Crimes and Abuse of Power, 1985).

The rights of all human beings are to be guaranteed by the State. The rights of victims are to be doubly safeguarded because they have been already wronged and need justice and sympathy. They have been at the receiving end of the crime and need restoration of their rights and also compensation suitable to the loss suffered by them. This is a basic and justified expectation of the victims. It is the duty of the state to ensure justice and due compensation to the victims. Hence, the researcher has undertaken to study the degree of justice done to the available indirect victims in the examined acquitted murder cases in the three districts of Tirunelveli, Tuticorin and Kanyakumari, during the period, from 1995 to 2010.
The rights of victims are every bit as important as those of any human being, as anyone at any time can be a victim. So, it is the duty of everyone to protect, save and support victims and work for their survival and restitution. It is with this objective, the researcher has taken up the present research, “An examination of access to justice – A Study of Acquitted Murder Cases in Three Districts, Tirunelveli, Tuticorin and Kanyakumari” a Qualitative study. In keeping with the objective, the thesis analyzes the effects of selected variables on the reasons for acquittal of the accused and the available indirect victims from the examined murder cases.

The basic principle of Criminal Procedure Code is to ensure that even if ten guilty persons escape, one innocent person should not be punished. As a result of this principle, much importance is given to proof and the standard of proof is quite high. If justice is to be done, the investigation also should be of a high standard. When there is a gap between the standard expected by the Cr.P.C. and that maintained by the investigation agencies, it could lead to acquittal of the alleged perpetrators of the crime. So it is necessary to find out how the investigation can be improved to ensure victim satisfaction, (direct or indirect) and enhance their access to justice. This in turn would help the victims feel a sense of gratification that the guilty has been brought to the book. It is from the available indirect victims that the acquittals in the examined murder cases in the three districts of Tirunelveli, Tuticorin and Kanyakumari between 1995 and 2010 are studied and analyzed to suggest possible ways to improve justice to victims.

Ensuring justice will accentuate the deterrent impact of the Criminal Justice System. This will automatically lead to reduction in crime, and violent crimes like murder in particular. This is the basic ground for this study and the researcher seeks to analyze the justice to the reasons for acquittal in the examined murder cases in the districts of Tirunelveli, Tuticorin and Kanyakumari during the specific period of time.

1.1.0. CONSTITUTIONAL PROVISIONS IN INDIA

The Constitution of India is the living document of this country and the basic law of this nation. As disclosed in its Preamble, it stands for securing justice to all the
citizens. In Article 39A, the Constitution proclaims its aspiration to secure and promote access to justice, in the following terms:

“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities” (Constitution of India).

A brief look at the provisions of the constitution will throw light on the human rights guaranteed by the state.

**Constitutional provisions for securing justice:** Dr. Ambedkar was a visionary. His rich experience in the day-to-day lives of the common man of India is reflected in the way the rights of the citizens are enshrined in the constitution. The framers of the constitution made ample provisions for achieving social, economic and political justice to all sections of the society. The Fundamental Rights are listed in part III. Dr. Ambedkar specifically added part IV; Directive Principles for the State. To quote Dr. Ambedkar,

“Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go.”
He also states,

“State may not have to answer for their breach in a Court of Law. But will certainly have to answer for them before the electorate at election time.”

- Dr. B. R. Ambedkar

To put it in a very simplified way, the difference between the Fundamental Rights and the Directive Principles of the state policy is this: the Fundamental Rights must be ensured by the court of law and the State, but the Directive Principles cannot be rendered mandatory by any court of law. In other words, a citizen can claim Fundamental Rights but the Directives Principles cannot be claimed as right by the citizen in a court of law.

1.2.0. JUSTICE THROUGH THE CENTURIES

1.2.1. PRE INDEPENDENCE

In the Criminal Justice System, only the best evidences should be taken into account and the rest should be given the benefit of the doubt in favor of the accused. This is not a concept derived recently.

It has been there in the system since time immemorial. In those days, the cases were not tried separately as civil and criminal. There were no complicated and intricate rules and regulations and laws and bills those days. They followed the Smrithiya age Justice System (Manu Smrithi). Theft, illicit contacts and forgery were considered grave crimes. Accidental murders and culpable homicide not amounting to murder were pardoned. Murders were forgiven or pardoned if both the parties entered into a compromise and the victim excused the offender, as in the case of the Islamic countries these days.

An analysis of the system during the Chola Period is pertinent in this context. For instance, when Sundaramoorthy Nayanar was about to get married, a stranger (later revealed as Lord Shiva) came to the court and pronounced that he was his slave. His Majesty’s court which functioned as the Court (Dharmasana Mandram) asked whether he could prove it by any one of the three regular methods. 1. Vogue (practice) 2. Documents (aavanam) 3. Eye witnesses or other witnesses (Ayalar Satchi). We come across this in the “Periyapuranam” by Chekkizhar, who was in the
court of Kulothunga Chola II. It is also established with the help of the stone inscriptions of the same rule, which is depicted in “The Cholas” by Neelakanda Sasthri.

A Chinese writer says, people who committed petty offences were whipped in the public and those who committed grave crimes were mutilated. Those who committed heinous crimes were ordered to be crushed by elephants (Sastri, 1929).

There were no pleaders in those days. The petitioner and counter petitioner themselves submitted their offence and defense before the court. Evidence was also not called for, for each and every simple argument. Only those incidents which occurred in a peculiar manner were to be established through concrete evidences (Sastri, 1932). During the Chola period, compensation was awarded by confiscating the property of the offender or slapping a fine on him (Sastri 1935). Even Thiruvalluvar says, death penalty given to a few is an effort to save the crops from the weeds.

The entire justice system of the Cholas rested on the ethical belief that justice will save the king and his rule. Hence special care was taken to render justice.

1.2.2. POST INDEPENDENCE

At present, the Government occupies the place of the king. The Police department is the arm of the Government. If the Police system fails to save the public, the Justice system is rendered void. Police is the prosecuting machinery. If it fails to produce results in the form of perfect investigation and conviction, the entire system will be failing in its duty. In such failures, the most affected party is the victim.

When a victim seeks justice, he or she is forced to knock on the doors of the investigation agency and the judiciary. As a result, he or she comes into direct contact with the Police and the courts. Hence a look at the way these two are structured is essential to analyse the victim perspective of the cases taken up for research.

1.2.2.0. INVESTIGATING AGENCY

When a crime takes place, the affected person seeks legal remedy through the Police department, which will probe the issue in question. The probing of the incident in detail, to find out the reason behind the occurrence, the agency which has executed
it, the help rendered by the accomplice, recovery of the lost property and arrest of the offender, is called investigation. The agency, well trained in this line of operation, with the help of the other connected agencies, and the society in the form of witnesses and informants, solves the issue on hand, the crimes.

The lofty principle a hundred guilty can go unpunished but not an innocent punished, has taken a skewed turn. This skewed turn allows many offenders to go scot-free and this causes further havoc in the society. Many more are victimized by the same offenders, who wiggle out of the clutches of the law, through sundry technical loopholes. In most cases, where the victims are poor or ignorant people, the victims’ interest is not safeguarded and the system supports the accused.

To support the prosecution, there must be an arrangement to promote better investigation techniques like video-graphing the investigation, interrogation, recovery, disposals, etc. At the time of recruitment for the police force itself, the option of investigation wing should be obtained from the candidates as in the case of Andhra Pradesh getting option from police personnel for the intelligence wing. Those who are chosen for the investigation team should be familiarized with scriptory work, scientific aid to investigation, and scientific interrogation methods. They must update the case diary files then and there, and the court work must be scrupulously followed. A team of such officers should be posted to each police station.

1.3.0. BARRIERS TO ACCESS TO JUSTICE

The major barriers to access to justice are:

1) Lack of awareness of legal rights, obligations and so on, complexity in structures and processes in the judicial system and low rate of legal literacy are, of course, common in our country.

2) Financial constraints. A Major number of victims who approach investigating agencies are generally people who cannot afford to pay litigation expenses. Most of them cannot even afford to stay away from their work for two or three days at a stretch.

3) Long delays in adjudications: Normally litigation process in our country is a long-winding and time-consuming process. Some of the reasons for this could
be attributed to: a) frequent adjournments due to want of witnesses’ appearance, b) non production of the accused, c) public prosecutor’s absence, d) inadequate number of judges, which leads to piling up of cases.

4) Excessive number of laws is an additional barrier to access to justice. Ensuring the effective or loophole-free implementation of the existing law would serve the purpose.

However, the government have experimented with solutions for these issues. It has enacted the Legal Services Authority Act, 1987. As per the provisions of the Act, we are providing free legal advice and legal services to the people handicapped by social and economic backwardness such as women, children, industrial workers, victims of mass disasters and natural calamities (Legal Services Authorities Act, 1987 Section 12.). There are Legal Services Authorities at National, State and District Levels. Legal Services Committees are at Supreme Court, High Court and Taluk levels also. (www.lawyersclubindia.com).

These provisions have been made because it is the victim who needs immediate help, guidance and counselling. In most cases, they need even food and shelter. But the person who gets all these without any effort of his /her own is the accused, who becomes the focus of the investigating authorities. For, till an accused is found guilty, he is innocent in the eyes of law. There are instances that the accused are not able to engage lawyers for defending the charges levelled against him/her. The system permits appointing State- Briefs, a lawyer at the State expense, in appropriate cases, when the court concerned is of the opinion that the accused is in need of a pleader for his defence. (Cr.Pc. Section 304 - Ratanlal & Dhirajlal, 2004).

There is provision for settlement, outside the Court. When a Court finds that there is a possibility of settlement in a litigation pending before the Court, our Civil Procedure Code, mandates the Court to formulate the terms of settlement and to refer the matter for settlement (Code of Civil Procedure, 1908, Section 89). Lok Adalath are constituted and convened, in regular intervals in all the Court Stations. The Mediation Centres are now established in the High Courts, and there is a special committee in the Supreme Court of India to monitor the functions of Mediation.
Centres and also to facilitate service of trained Mediators (www.Lawyersclubindia.com). In spite of all these provisions the victim is generally at a loss. Delay in acquiring proper and timely relief is the worst defect of the Court system. The next section deals with that.

1.4.0. PRESENT STATUS OF THE STUDY

We still follow the Justice system introduced by the British Masters. This system lacks elasticity, accommodativeness, pliability and localness (or) nativity. This modern justice system has burnt Manusmrity, Dharmasastra, ancient laws and the Native justice culture. Even Mahatma Gandhi demanded complete replacement of imposed British Law by native Law, but the plea was in vain. The modern justice system in India is not fit for our large democratic and mixed culture. Here the legal maxim, ‘Len posterior derogate priori’ (Later law removes the earlier) is to be taken into account.

The societal perception of judges as being detached and impartial referees is the greatest strength of the judiciary, and every judge has to ensure that this perception does not receive a setback. The Courts are for the people who have reposed confidence in them and therefore the greatest threat to the independence of the judiciary is the erosion of its credibility in the public mind, for whatever reasons. Lord Denning six weeks after he completed 100 years, said: "Justice is rooted in confidence, and confidence is destroyed when the right-minded go away thinking that 'the Judge is biased". The import of these observations is that the person who dons the robes of a judge, should be, fair, just, unbiased and impartial, while engaged in the administration of justice, as far as is practicable. Justice Marshall of the United States Supreme Court put it succinctly when he observed, "We must never forget that the only real source of power that we as judges can tap is the respect of the people." The source of this respect was pointedly expressed by Lord Denning, "They (Judges) will not be diverted from their duty by any extraneous influences; or by any hope of reward nor by the fear of penalties; nor by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people confidence in judges." (Denning, 1982).
The rights of victims are every bit as important as those of the alleged criminals are, and in recent decades government agencies have strengthened services to crime victims. (www.stationeryprinting.tn.gov.in). The administration of criminal justice in our country appears to be at crossroads. Large-scale acquittals are eroding people's confidence in the effectiveness of the system. When people see persons accused of heinous and ghastly offences getting acquitted, walking scot-free, they believe 1) that the laws are toothless; 2) the courts are either too liberal or pro-criminal; 3) courts are not functioning the way they ought to function.

Most of the victims accept the acquittals without any question. Unfortunately, victims do not know, nor do they try to find the reasons for such acquittals. The reasons for the placid acceptance of the acquittals could be poverty, ignorance, lack of support and a resigned attitude and so on.

In this context, it is pertinent to take a re-look at the system’s functioning. The researcher points out that most of the acquittals are on account of the fact that the witnesses produced by the prosecuting agencies fail to support the prosecution cases. Unfortunately, a very large number of acquittals are also on account of faulty, non-scientific and disoriented investigation. Some acquittals also take place, because the judicial officers, rather than sifting the evidence with care, take to the easy course of throwing out the prosecution case on account of minor discrepancies and narrow technicalities citing the benefit of the doubt as the reason for acquittals. They tend to ignore human psychology and behavioral probability while assessing the testimonial potency of the evidence. It is to be remembered that justice can be made sterile on the specious plea that no innocent should be punished even if many guilty escape. Indeed, the innocent should not be punished, but why should the guilty escape? The public expects the court to recognize that an offence has been committed and respond to the society’s cry for justice and punish the guilty (Anand, 1999). Their verdicts should be beacons of hope for the victims in particular and the public in general, because anyone can become a victim at anytime. A detailed rendering of victim perceptions of victimology, and need for, as well as the ways and means of victim assistance is given, in order to highlight the need for the research.
1.5.0. VICTIMS

Society as a whole should work together and participate in caring for victims of crime across the country. Being a victim of criminal acts has a deathly effect on a person/persons. Victims of crimes are likely to suffer in at least one of the numerous ways: social stigma, financial problems, physical difficulties, and undoubtedly mental stress. Many victims of more severe crimes develop Post-Traumatic Stress Disorder (PTSD). The symptoms can last substantial amounts of time, even as much as a decade after the incident occurred. Victims of sexual crimes especially can experience problem avoidance, self-esteem issues, and social withdrawal. Due process and human rights exist for victims of crimes and defendants, but everyone really needs to care for victims, not just courts, law enforcement agencies, and human service systems. In 1982, the U.S. President, Reagan developed the Task Force on Victims of Crime. The purpose of this group was to find a balance between the rights of victims and providing due process to defendants. This involved providing victims with protection from intimidation, reinstitution in criminal cases, guidelines regarding fair treatment of victims, and also expanding victim compensation (Siegel, 2006).

In cases involving the death of a victim, the family of the victim should be given the awareness about the assistance that they can claim: 1) help for burial expenses. 2) Emergency assistance available in the form of replacing prescriptions for medications and food vouchers. 3) Assistance available to help victims better understand trials and what will be expected. 4) Education that provides victims with ways of dealing with confrontations and various other things. Programmes that provide long term or emergency assistance for medical care, food, shelter, transportation, and clothing. 5) Crisis intervention that provides victims with counselling whenever and wherever the victim needs it. 6) Victim-offender reconciliation programs which serve to help certain victims who wish to confront their attackers.

Some victims use such programs in order to finally end what has happened so they can find peace, forgive, and move on with their lives. Even victim impact statements allow victims to openly express their experience of pain and agony before
the sentencing judge. It seems only fair that the victim should have the right to impact and influence the result of a trial (Siegel, 2006).

1.5.1. Victimology

"In the rush to examine a criminal's behavior, it is not difficult to become distracted by the dangling carrot of that criminal's potential characteristics and forget about the value of understanding his victims"

- Brent Turvey

“Victimology is the Cinderella of Criminology and from the point of view of the legal literature and sociological research, little attention has been paid to this branch of knowledge”

- Justice V.R. Krishna Iyer

Victimology in its most simple form is the study of the victim or victims of a particular offender. It is defined as "the thorough study and analysis of victim characteristics" (Turvey, 1999), and may also be called "victim profiling" (Holmes, 1996). The victim constitutes roughly half of the receiving end of the criminal offence, and as such, is as much a part of the crime as the crime scene, weapons, and eyewitnesses. This is especially true when we are presented with a live victim, as this was the last person to witness the crime, and may be able to provide the best behavioral and physical description of the offender.

Apart from these considerations, the victim's background may provide us with important information about past activities or lifestyle, possibly leading directly to the narrowing down to a suspect. The victim has traditionally been neglected in police investigations, and when a crime profile is requested, the details centre on the offender but the details of the victim are missing from the police reports. This should not be taken to mean that no police services use victim information, rather, until recently many have neglected to consider the victim's part as important. Often, the best way to approach a profile is through the Victimology (Ressler, 1992). It is one of the most beneficial tools in classifying and solving a violent crime (Douglas, 1992), especially if the victim is alive.
In a good report, the following information should be available for the profilers on the victim before they begin to work on the case (Turvey, 2009):

- Physical traits
- Marital status
- Personal lifestyle
- Occupation
- Education
- Medical history
- Criminal Justice System history
- Last known activities, including a timeline of events
- Personal diaries (if known and available)
- Map of travel prior to offence
- Drug and alcohol history
- Friends and enemies
- Family background
- Employment history

The list is not "exhaustive" in that it does not provide a total and absolute checklist of those things that should be included in victimology. It is a rough guide only and each case, with a unique perpetrator and victim, will require its own unique victimology (www.trutv.com).

The growth of victimology as a branch of criminology has some interesting data.

1.5.2. HISTORICAL OVERVIEW OF VICTIMOLOGY

1.5.2.0. The Early Roots

The word “victim” has its roots in many ancient languages that covered a great distance from northwestern Europe to the southern tip of Asia and yet had a similar linguistic pattern: victima in Latin; vih, wéoh, wig in Old European; wih, wíhi in Old High German; vé in Old Norse; weihs in Gothic; and, vinak ti in Sanskrit (Webster’s, 1971).
Victimology as an academic term contains two elements:

- One is the Latin word “Victima” which translates into “victim”.
- The other is the Greek word “logos” which means a system of knowledge, the direction of something abstract, and the direction of teaching, science, and a discipline.

Although writings about the victim appeared in many early works by such criminologists as Beccaria (1764), Lombroso (1876), Ferri (1892), Garofalo (1885), Sutherland (1924), Hentig (1948), Nagel (1949), Ellenberger (1955), Wolfgang (1958) and Schafer (1968), the concept of a science to study victims and the word “victimology” had its origin with the early writings of Benjamin Mendelsohn (1937; 1940). These led to his seminal work, where he actually proposed the term “victimology” in his article, “A New Branch of Bio-Psycho-Social Science, Victimology”. It was in this article that he suggested the establishment of an international society of victimology, which has come to fruition with the creation of the World Society of Victimology, the establishment of a number of victimological institutes (including the creation in Japan of the Tokiwa International Victimology Institute); and, the establishment of international journals which are also now a part of this institute. Mendelsohn, with his victimology vision and blueprint is now referred to as “The Father of Victimology”.

1.5.2.1. Critical Dates in Victimology

- 1924 Edwin Sutherland includes a chapter on victims in his criminology textbook.
- 1937 Beniamin Mendelsohn publishes his writings on the rapist and his victim.
- 1941 Hans von Hentig publishes article on victim and criminal interactions.
- 1947 Beniamin Mendelsohn coins the term “victimology” in a French journal.
- 1949 Frederic Wertham first used the word “victimology” in a book, “Show of Violence”.
The focus on the victim resulted in studies on the victim, which in turn led to the formulation of the many theories. These theories throw light on aspects of factors that render a person victim prone.

1.5.3. THEORIES OF VICTIMS

A study of victims has shed light on the type of people who stand chances of getting victimized. The various theories are based on different concepts. For a long time, criminologists focused their attention strictly on the role of the criminal. But over the years, it has been discovered that the role of the victim is actually as important as well, as it can influence, and motivate a criminal. Today, there are a number of theories attempting to explain victimization and its causes. A few of the most common and important theories are the Victim Precipitation Theory, the
Lifestyle Theory, the Deviant Place Theory and the Routine Activities Theory (Siegel, 2006).

I) Active Precipitation

The Victim Precipitation theory suggests that some people cause or initiate a particular confrontation that may eventually lead to that person becoming victimized, leading to injury or death. Such precipitation on the part of the victim can either be active or passive. Active precipitation exists when the victim knowingly acts in a provocative manner, uses words of quarrel or threats, or simply attacks first. In cases of rape, courts have presented not-guilty verdicts, based on whether or not the victim acted in any way that seemed to consent to sexual relations, such as the manner in which a woman was dressed (Siegel, 2006).

II) Passive Precipitation

Passive precipitation however, occurs when the victim contains characteristics that unknowingly motivates or threatens the attacker. Such crimes can exist due to personal conflicts, such as two individuals competing for the attention of one individual, a promotion, a job, or any other desirable or rare commodity. A woman may receive a promotion and become a victim of violence, because of the jealousy of someone she may or may not even know. Such precipitation may also exist when a victim is part of a particular group that offends or threatens someone's economic well-being, status or reputation. According to research, passive precipitation exists in relation to power. Therefore, economic power reduces the risk of victimization (Siegel, 2006).

Many criminologists believe that those whose lifestyle increases criminal exposure are more likely to become victims of crime. Behaviors such as going out late at night, associating with younger men, and residing in cities increases the chances of falling victim to crime. Therefore, one can reduce their chance of becoming a victim by staying home at night, living in a suburban area, avoiding public areas, getting married, and making more money. Therefore, the lifestyle theory holds that crime is not random, but is a fallout of an individual's chosen lifestyle (Siegel, 2006).
Those who choose high-risk lifestyles which include taking drugs, drinking, and participating in criminal activities run a much higher risk of becoming victims. Young men in particular have a very high risk of victimization. Those who commit crimes increase their chances of becoming victims of crimes as well (Siegel, 2006).

1.5.3.0. DEVIANT PLACE THEORY

This theory holds that victims do not motivate crime, but rather are prone to becoming victims, simply because they live in social areas that are disorganized and contain high crime rates, and therefore have the highest risk of coming into contact with criminals regardless of their lifestyle or behavior. The more someone visits a high-crime area, the more chances they will have at becoming a victim. Such places are poor and highly populated (Siegel, 2006).

1.5.3.1. ROUTINE ACTIVITIES THEORY

The final theory is the routine activities theory which concludes that the "volume and distribution of predatory crime" are closely linked to three variable interactions that present the typical 'routine activities' executed in an American traditional lifestyle (Siegel, 2006 p.80). These variables involve: (1) available and suitable targets such as unlocked homes that contain saleable goods, (2) the lack of proper guardians such as police, house owners, and neighbors, and (3) the existence of conformed offenders such as addicts, teenage boys, and those who are unemployed. The presence of such components increases the probability that predatory crime will occur. Therefore, targets are more likely to become victims of crime if they are engaging in dangerous behaviors, lack guidance, and are frequently exposed to a large population of motivated offenders (Siegel, 2006).

The fresh interest in the victim perspective of a crime led to a search for means of victim assistance.

1.5.4. VICTIM ASSISTANCE

Since the mid 1970s victim assistance programs in America had to cope with the realization that this new field did not have a professional corps of people with special training in dealing with crime victims. Those who were working in the programs were a mixture of medical doctors, ministers, psychiatrists, psychologists,
social workers, nurses, on-the-job trained counselors, persons outside the helping professions and volunteers with varying levels of training. There were no international or national professional standards. There was no certificate or degree course to prepare someone to do the work of helping victims recover. However, before formal victim assistance programs evolved, there were social workers and some people trained to work with victim problems, especially people who had been helping child abuse and family violence victims. These were social workers.

Today, the victim services scene has changed. There are a wide array of professionals and non-professionals working with victims. These would include: social workers, psychologists, psychiatrists, nurses, medical doctors, non-specific professionals (who received their formal degrees in other fields but were trained to help victims in the numerous training schools which are both part and independent of academic settings). Today the field of victim assistance is the major career field in victimology for persons wanting to help victims of crime directly. The single largest and oldest university offering a bachelor’s degree in victimology and a victim services certificate is the California State University, Fresno. Worldwide, it can be estimated that there are about 20,000 victim service programs now operating: reducing suffering and facilitating recovery (Dussich, 2000). In this context, it is imperative to look at the role played by the back bone of the justice system – judges, who are looked upon as the pillars of uprightness and honesty. A study of the judicial system is equally essential to understand the victim’s perspective.

1.6.0. JUSTICE

“After all is said and done, we cannot deny the fact that a judge is almost of necessity surrounded by people who keep telling him what a wonderful fellow he is. And if he once begins to believe that, he is a lost soul”

- Arch M. Cantrall (in Devitt, 1961)

Justice is important, as it restores a sense of equal citizenship and humanity, forces acknowledgement of the suffering, and prevents recurrence. To work in order to secure justice to each and every section of the society is one of the most important goals of a successful State. In the Indian context, securing justice to the citizens has
been kept on supreme priority, keeping in mind the basic principles enshrined in the Constitution. The stalwarts who drafted the constitution have enshrined the basic rights that are to be guaranteed by the State. The Preamble of the Indian Constitution also talks about achieving social, economic, political justice as its goal (http://legalservices.co.in). But ensuring justice has been a dream to lots of victims. How the system, that was meant to help them, has become a stunning and shocking behemoth is best understood when the functioning of the system is analyzed with a critical eye for details.

1.6.1. CONSTITUTIONAL PROVISIONS FOR SECURING JUSTICE

India became free from the British rule after a long battle for independence, and finally the long-awaited desire for self-rule was fulfilled. The founding fathers of the nation drafted the basic rules for the governance of the country in the form of the Constitution. The major task of the Constituent Assembly was to provide a vehicle of national progress which comprises the best from the past experience, cater to the need of the present, and also at the same time have enough resilience to cope with demands of the future.

Framers of the constitution, keeping in mind, the bitter experience of the past, made ample provisions for achieving social, economic and political justice to all sections of the society. For the same reason, they devoted chapters on Fundamental Rights and Directive Principles of the state policy in the constitution. Social justice was the major plank for Dr. Ambedkar, and even while introducing the draft of the Constitution, in the Constituent Assembly, he pointed out that with this Constitution India was entering the era of ‘one man one vote’, i.e. political democracy, but the social democracy seemed to be still a goal not very easy to achieve (http://legalservices.co.in).

The Preamble aims at securing to all citizens Justice: social, economic and political. Though it is not easy to give a precise meaning of the term ‘justice’, by and large, it can be stated that the idea of justice is equated with equity and fairness.

The judicially enforceable “Fundamental Rights” provisions of the Indian Constitution are set forth in Part III in order to distinguish them from the non-
justifiable “Directive Principles” set forth in Part IV, which establish the inspirational goals of economic justice and social transformation. One of our Directive Principles also talks about free legal aid. It says, the state shall secure that the operation of the legal system promote justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Such provision became part of our constitution keeping in view the immense poverty in the country, where a significant portion of the population find it difficult to arrange for their basic needs such as food and clothing; in such a situation how could the people think of indulging in costly and time-taking litigation when their rights are violated (http://legalservices.co.in).

The constitution provided for safeguards when the provisions of fundamental rights are violated by the state. This is in the form of right to constitutional remedy by moving directly the Supreme Court or High Courts under article 32. This is the most unique feature of the Indian Constitution. The provision of the article states that:

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part [Part-III] is guaranteed.

2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo - Warranto and Certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part (http://legalservices.co.in).

1.6.2. ACCESS TO JUSTICE IN INDIA

Access to justice is recognized as a prominent and fundamental right, in several international documents. In India, the National Commission to Review the Working of Constitution (NCRWC), constituted in the 50th year of Independence, in its final report suggested incorporation of this right as Fundamental Right by incorporating Art.30 A, in the Constitution, in the following terms,

30 A. Access to Courts and Tribunals and Speedy justice.-
1. Everyone has a right to have any dispute that can be resolved by the application of law decided in fair public hearing before an independent court, or where appropriate, another independent and impartial tribunal or forum.

2. The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, tribunal or other forums and the state shall take all reasonable steps to achieve the said objectives.

The identification and recognition of one’s grievance has a direct co-relation to his right. This bundle of rights includes natural rights or basic and human rights, Fundamental Rights, other constitutional rights and statutory rights (Mourya, 2010). Apart from the Universal Declaration of Human Rights, the Constitution of India, guarantees, Fundamental Rights in Part III, from Articles 14 to 32. This includes, right to equality, freedoms, right to life, religious rights, and minority rights and finally the special right which guarantees constitutional remedies in cases of infringement of Fundamental Rights. Though these rights are not absolute, but protected under Article 13 of the Constitution, which expressly prohibits enacting of law inconsistent with or in derogation with Fundamental Rights. Additionally, any action abridging the Fundamental Rights is subject to inherent or implied limitation, as per the Doctrine of Basic Structure or Basic Features (Pradeep, 2010).

The concept of access to justice, primarily, necessitates a potential system securing appropriate legal remedies within the Civil and Criminal justice fields. “Judiciary, being an integral part and parcel of an effective judicial system, has a greater role in ensuring access to justice. Access to justice, which is fundamental in implementation of every human right, makes the judicial role pivotal to constitutional functionalism”. (Iyer (2003), Legally Speaking, Universal Law Publishing Co. Delhi, (2003) at p 171.)

1.6.3. ACCESS TO JUSTICE: INTERNATIONAL PERSPECTIVE

"Access to Justice" is perhaps the most fundamental problem facing the third world today, and has assumed importance in countries like India, where the right to enforce Fundamental Rights is itself constitutionally guaranteed as a fundamental
right. The question of one's responsibility to secure justice to those who have no access to justice has become a much-debated constitutional question in the context of "Social Justice" that the Preamble to the Constitution seeks "to secure to all its citizens".

Indeed one of the most important issues confronting the administrative lawyers to-day, all over the world is the rule of 'standing' or 'locus standi' in the context of growing demand to protect the weaker sections of the society, to conserve public resources, to direct and, if necessary, to correct the exercise of public power and ensure just and fair working of the Government.

In ancient Rome, the doctrine of action popularis permitted any citizen to bring an action in respect of a public debate. But most of the common law and civil law systems today exclude such action popularis and require the applicant to show some sort of interest in the subject matter of litigation before permitting him to maintain the action. In England, during the 19th century, the courts were reluctant to let anyone come unless he had a particular grievance of his own. He had to usually show that he had some legal right of his own that had been infringed or some property of his own that has been badly destroyed. It was not enough that he was one of the public who was complaining in company with hundreds or thousands of others. The rule was laid down in order to avoid multiplicity of actions.

"...... it would be unreasonable to multiply suits, by giving every man a separate right of action, for what dignifies him in common only with the rest of his fellow subjects"

- Sir William Blackstone

The reason for this rule appears to be that remedies of the Declaration and Injunction were the preserves of the Court of Chancery, which had held that if an ordinary citizen sought to assert a public right, a right which he enjoyed equally with everyone else, or to enforce a public duty, a duty owed to the public at large, his only remedy was to apply, to the Attorney General for his consent, to bring 'relater' action. If the Attorney General consented, the action proceeded as an action by the Attorney General himself on the relation or that person; but if the Attorney General did not
consent, that person could do nothing. Court of Appeal in Attorney General vs. Independent Broadcasting Authority reaffirmed this law and refused Mr. McWhirter—the real plaintiff, an injunction in realtor proceedings. In so holding, the Court by a majority held that since the declaration was sought against a public authority, the action by the individual was maintainable.

According to Lord Denning, the disapproval was on a very narrow ground. "It was because of the remedy which Mr. McWhirter was seeking. If he had been in a position to bring one of the prerogative writs such as Certiorari, Mandamus or Prohibition, undoubtedly the Independent Television Authority was a statutory authority against whom any of the prerogative writs would lie. It seems to me a strange state of the law that Mr. McWhirter should have sufficient interest to bring Certiorari, Mandamus or Prohibition, but not sufficient interest to bring a claim for declaration or injunction”.

The aforesaid rule was not very strictly followed by Courts of common law when granting Certiorari, Mandamus or Prohibition, who always kept their options open. They have held that it is the discretion of the court whom it shall hear and whether to grant such a remedy or not. The tendency in the past was to limit them to persons who had a particular grievance of their own over and above the rest of the public. But in recent years there has been a remarkable series of cases in which private persons have come to the Court and have been heard. There is now a much wider concept of *locus standi* when complaint is made against a public authority. The rights of the people get a boost from the preambles laid down by the U.N.O which is like a watch dog to protect the rights of the people world over.

**1.6.4. THE U.N. DECLARATION**

- The Universal Declaration of Human Rights provides basic guiding principles for all legal and judicial systems.
- Going to court is rarely the preferred method of resolving disputes. A comprehensive understanding of law includes a wider analysis of dispute resolution and of strategies that use trust (personal and calculative).
Securing a voice for the weakest members of the society is a fundamental part of a rule of law framework. Justice must arm the weak with the possibility of winning against the strong, even against the state itself.

Accountability in the supervision of government and administration is very important. In many areas of the world there has been a great loss of public trust in the judiciary (Puymbroeck, 2001).

1.6.5. DIFFERENT RIGHTS FOR ACCESS TO JUSTICE IN INDIA

There are other sets of rights guaranteed as per the express provisions in the Statutes. Right of representation in elected bodies, right to maintenance, right to minimum wages, right to social security, right to vote are some of such rights. In India, there are a number of statutes dealing with these special kinds of rights, such as Representation of Peoples Act, Minimum Wages Act, Provisions for Maintenance under Section 125 of the Code of Criminal Procedure, Social security’s under Workmen’s Compensation Act, Payment of Bonus Act, Payment of Gratuity Act, and so on (Pradeep, 2010).

India is a secular and democratic republic. Rights of different religious peoples and that of the minorities, linguistic or cultural, are protected under the Constitution itself. As well, the rights under the personal laws and customary rights are protected subject to the provisions of Fundamental Rights guaranteed in Part III of the Constitution of India. Such rights include the right of inheritance and succession, right to marry, right of performing religious rituals etc (Mourya, 2010).

A Bird’s Eye View of the Structure of the Criminal Justice System

1.6.6. ADMINISTRATION OF JUSTICE BY JUDICIAL COURT SYSTEM

In India, a chain of Court system exists, which consists of Higher Judiciary and Subordinate Judiciary. In the Higher judiciary, we follow a federal system consisting of Union Judiciary and State Judiciary, in such a way that the Supreme Court is at the apex level (Constitution of India, Art. 124) and High Courts (Constitution of India, Art. 214) in each States.

In the Subordinate Judiciary, a uniform hierarchy of criminal courts and civil courts are there, though it varies from State to State, in relation to nomenclature and
jurisdictions. In the Civil side, we have City Civil Courts or Court of Munsiff, Court of Sub-ordinate Judges and Court of District Judge, established as per the provisions of Civil Courts Act. In the criminal justice field, there are Judicial Magistrates Courts and Sessions Court to deal with the offences under the Indian Penal Code and other Special Criminal Statutes. The High Courts in the States and the Supreme Court of India are also major components of this hierarchy in Civil and Criminal Justice System, as it holds the appellate and revision jurisdictions over the sub-ordinate courts (Pradeep, 2010).

Additionally, there is a system for establishing special courts to deal with the special kinds of litigations. For adjudication of charges under the anti-corruption laws, there are Vigilance Tribunals, in every State. For adjudicating issues arising out of family and matrimonial relations, there are Family Courts, established under the Family Court Act. (Mourya, 2010)

1.6.7. DIFFERENT SERVICES OF LEGAL SERVICE AUTHORITIES

As per Arbitration and Conciliation Act, 1966, the Legal Service Authorities are entrusted with the additional functions of legal awareness, among women, socially and educationally backward classes, industrial workers and the school students. There are a number of Non-Governmental Organizations, attending to the specific tasks of legal awareness and legal literacy among the poor and disadvantaged groups. Judges, Lawyers and Law Academicians play a keen and pivotal role in implementing such literacy programmes (Mourya, 2010).

1.6.8. ROLE OF PARLIAMENT TO PROMOTE ACCESS TO JUSTICE

The Parliament of India is the supreme legislative body of this country. Access to justice can be expedited or strengthened in a better way by making use of the legislative capacity of the Parliament. The Legal Services Authorities Act, 1987, The Right to Information Act, 2005, the Gram Nyayalaya Act, 2008 are the major contributions of the Parliament in this regard.

The Committee on Reforms of Criminal Justice -2003 (Justice Malimath Committee) submitted its report highlighting the basic problems of the Criminal Justice System. It was observed in the report that the important object of the Criminal
Justice System is to ensure justice to the victims, yet he/she has not been given any substantial right, not even the right to participate in the criminal proceedings. The committee further suggested granting the victim, the right to be represented by an advocate of his/her choice. An advocate shall be provided at the cost of the state, if the victim is not in a position to afford a lawyer. The committee also supports reserving the right of appeal to victim, against the adverse orders passed by the Court and also for his/her entitlement to compensation, on completion of adjudication (Mourya, 2010).

Now, by the Code of Criminal Procedure (Amendment) Act, 2008, the legislature introduced an amendment in Section 24 of the Code by inserting the proviso to enable the victim to engage an advocate of his/her choice to assist the prosecution, on obtaining permission from the Court. This is another significant contribution of the Parliament in strengthening the access to justice (www.indianet.nl/pdf).

1.6.9. ROLE OF HIGHER JUDICIARY TO PROMOTE ACCESS TO JUSTICE

The Higher Judiciary in India consists of the Supreme Court and High Courts in States. Complexity in the process and the structure of our judicial system is one of the major barriers in strengthening the access to justice. To curb this situation, our courts are intensively promoting the special class of litigations, namely Public Interest Litigations. In the field of writ jurisdiction, the higher judiciary in India widened the scope of *locus standi* principles, to enable the needy to exercise their right to access to judicial system. Thus a litigation for public good can be initiated not only by an aggrieved person but also by a public spirited individual or social action group or by a *suo motu* action by the Court, for the enforcement of the constitutional or legal rights (Nakara D.S. v. Union of India, AIR 1983 SC 130, Upendra Baxi v. State of U.P., (1983) 2 SCC 308, Mehta M.C. v. Union of India, AIR 1987 SC 1086). Public Interest Litigation can be moved before the higher courts, if the aggrieved person is not in a position to approach the court for redress and such a person belongs to a class or group of persons who are in a disadvantaged position on account of poverty,
disability or other social or economical impediment, and are unable to enforce his/her rights (Subhash Kumar v. State of Bihar, AIR 1991 SC 420 at paras 7 & 8).

There is no abstract procedure prescribed for initiating Public Interest Litigation. Such motion may be initiated not only by a regular petition under Article 32 before the Supreme Court of India, and Article 226 before the High Courts, but also by a letter addressed to the Court or even a telegram sent to the Registrar of the Court (State of Himachal Pradesh v. A parent of a student of Medical College, Shimla, AIR 1985 SC 910, Mohanlal Sharma v. State of Utter Pradesh, (1989) 2 SCC 600, Sachdev v. Union of India, AIR 1991 SC 311).

The involvement of higher judiciary in ensuring access to justice is praiseworthy. It is appropriate to highlight some of the cases. In common cause v. Union of India, AIR 1996 SC 929, the Supreme Court of India, issued necessary directions to the Government to appoint an expert committee to take immediate action to curb the situations of serious deficiencies and shortcomings in the matter of collection, storage and supply of blood through blood banks. In Bhopal Gas Peedit Mahila Udyog Sangathan v. Union of India, AIR 1989 SC 1069, the Court framed an interim relief scheme for the welfare of victims of Bhopal Gas Leakage Tragedy and directed the government to implement the scheme. When the instances of child exploitation, including prostitution, were brought to the notice of the Court, in Vishal Jeet v. Union of India, AIR 1990 SC 1412, the Supreme Court of India directed the government to take steps in providing rehabilitative homes manned by trained personnel. (www.indianet.nl/pdf).

1.6.10. ROLE OF QUASI-NON JUDICIAL INSTITUTIONS

Equality of status and opportunities is the basic ideal of the Constitution. However, Article 15(3) of the Constitution permits granting special status to women and children. To safeguard the interest of women and to monitor their social security, there are Women’s Commissions at National and State levels, constituted as per the provisions of respective Women’s Commission Acts (Pradeep, 2010).

For protection of child rights, National Commission for Protection of Child Rights and State Commissions of Protection of Child Rights are functioning in terms of the provisions of the Commissions for Protection of Child rights Act, 2005. Section 25 of the Act provides establishment of Children’s Court, for speedy trials of the offences against children and offences of violation of child rights (Moury, 2010).

To investigate the incidents of human rights violation there are Human Rights Commissions, at the National and the State levels, constituted as per the provisions of the Protection of Human Rights Act, 1993. Section 30 of the Act provides for establishment of Human Rights Court, for each district, to facilitate speedy trial of offences arising out of violation of human rights. These institutions often pilot necessary programmes for strengthening the access to justice for the respective classes of people (Pradeep, 2010).

1.6.11. MODALITIES TO ERADICATE LONG DELAY IN ADMINISTRATION OF JUSTICE

Occurrence of long delay in conclusion of litigation and huge arrears of cases are the major hurdles in the administration of justice. To a great level, it also affects the programmes for strengthening access to justice. Recently, certain positive changes have been made in the traditional system of administration of justice. Provisions were introduced in the statutes to conclude the adjudications in a time-bound manner. Outer time is prescribed for issuing court notices, appearance of parties in the litigation, filing of defence and conclusion of trials. (Pradeep, 2010)

Some radical changes have been implemented in the structure and process of traditional court system, in recent times. The scheme of “Fast Track Courts” has been
introduced in Criminal Justice administration to enable speedy trial of grave offences. The recent trend is that almost all the special enactments have established special courts like Children’s Court, Human Rights Court, to adjudicate offences and violations. Introduction of Gram Nyayalaya at the grass root level, the Panchayat level, is another significant measure to enable speedy dispensation of justice and easy accessibility of justice to the people from rural and tribal areas (Pradeep, 2010).

An unreasonable delay in the administration of justice is nothing but a bitter, undesirable denial of justice. There are two principal causes for delay in administration of justice. One is the increasing population and the corresponding increase in litigations. The other is the lack of resources, that is the large number of vacancies of Judges, and a low judge-population ratio. The Law Commission of India in its 127th Report, in the year 1988, suggested that the State should improve the Judge-population ratio, which at that time was 10.5 Judges per million populations, to at least 50 judges within five years, to overcome the issue of arrears of cases in the courts. The Commission had further recommended that by 2000, India should have at least 107 Judges per million of population. But, we could reach the ratio of 12 to 13 Judges per million, in the year 2002, which has come down to 12.5 in the year 2009.

Improper investigation and prosecution is another barrier to access to justice. One of the major demerits of the Indian Criminal Justice System is the involvement of foul play in criminal investigations and involvement of political and communal bias in prosecution. Thus, compared to other countries, the conviction rate in India is below 40% of the total cases registered (Per Justice R. Bannumathi in judgment dated 21-01-2010 in W.P. © No 31031 of 2009, para 26). As per the provisions of the Code of Criminal Procedure, the police are the investigating agency, and public prosecutors, appointed under Section 24 of the Code, are the state officers for the victims, who take part in the enquiry and trial (Pradeep, 2010).

1.6.12. FACTORS FOR A NEW LEGAL STRATEGY AS AN EFFECTIVE TOOL OF SOCIAL JUSTICE

- Ensuring people’s participation in judicial process as a requirement of our democratic republic;
Necessity to grant basic human rights and fundamental freedom to all irrespective of financial and social differences;

Need to curb executive excesses and thereby ensure a responsible government which is the fundamental principle and need of the democratic republic;

Need to curb and eradicate corruption at all levels of political democracy so as to enable the vast masses of people to enjoy fruits of liberty;

Need to secure public good or benefit; (Pradeep, 2010).

1.7.0. PUBLIC INTEREST LITIGATION

"Public Interest Litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected." (http://www.ngosindia.com/resources/pil.php)

1.7.1. DIFFERENT FORMS OF PUBLIC INTEREST LITIGATION

"Public Interest Litigation's explicit purpose is to alleviate the suffering of all those who have borne the brunt of insensitive treatment at the hands of a fellow human being. Transparency in public life and fair judicial action are the right answer to check increasing menace of violation of legal rights. Traditional rule was that the right to move the Supreme Court, is only available to those whose Fundamental Rights are infringed".

- In Black's Law Dictionary

But this traditional rule was considerably relaxed by the Supreme Court in its recent rulings:

"The court now permits Public Interest Litigation or Social Interest Litigation at the instance of " Public spirited citizens" for the enforcement of constitutional and legal rights of any person or group of persons who because of their socially or economically disadvantaged position are unable to approach court for relief. Public interest litigation is a part of the process of participatory justice and standing in civil litigation of that pattern must have liberal reception at the judicial door steps".

- In the case of M.C Mehta V. Union of India (1988) 1 SCC 471
"The Supreme Court held in the Public Interest Litigation filed by a human right activist fighting for general public interest that it is a paramount obligation of every member of medical profession to give medical aid to every injured citizen as soon as possible without waiting for any procedural formalities”.

During the last few years, Judicial Activism has opened up a new dimension for the judicial process and has given a new hope to the millions who struggle for their livelihood. There is no reason why the Court should not adopt activist approach similar to Courts in America so as to provide remedial amplitude to the citizens of India.

The Supreme Court is now ensuring its role in a welfare state, using its new strategy for the development of a whole new corpus of law for effective and purposeful implementation of Public Interest Litigation. One can simply approach the Court for the enforcement of Fundamental Rights by writing a letter or post card to any Judge. That particular letter based on true facts and concept will be converted into a writ petition. When Courts welcome Public Interest Litigation, its attempt is to endure observance of social and economic programmes framed for the benefit of the have-nots and the handicapped. Public Interest Litigation has proved a boon for the common man. By relaxing the scope of Public Interest Litigation, the Court has brought legal aid to the doorsteps of the teeming millions of Indians. The Supreme Court's pivotal role in expanding the scope of the Public Interest Litigation as a counter balance to the lethargy and inefficiency of the executive is commendable.

(1.8.0. CRIMINAL LAW AND PROCEDURE - THE CRIMINAL JUSTICE SYSTEM IN INDIA)

Under the Constitution, criminal jurisdiction belongs concurrently to the central government and the states. The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Indian Penal Code and the Code of Criminal Procedure of 1973. Separate legislation enacted by both the states and the central government also has established criminal liability for acts such as
smuggling, illegal use of arms and ammunition, and corruption. All legislation, however, remains subordinate to the Constitution (www.mongabay.com).

The Indian Penal Code came into force in 1862. Based on the British criminal law, the Code defines basic crimes and punishments, applicable to resident foreigners and citizens alike, and recognizes offenses committed abroad by Indian nationals. The Penal Code classifies crimes under various categories: crimes against the state, the armed forces, public order, the human body, and property; and crimes relating to elections, religion, marriage, and health, safety, decency, and morals. Crimes are cognizable or non-cognizable, comparable to the distinction between felonies and misdemeanors in legal use in the United States. Six categories of punishment include 1. Death, 2. Imprisonment for life, 3. Deportation (Repealed) 4. Imprisonment, which is of two descriptions, namely, a) Rigorous, with hard labour, b) Simple, 5. Forfeiture of property, 6. Fine. An individual can be imprisoned for failure to pay fines, and up to three months' solitary confinement can occur during rare rigorous imprisonment sentences. Commutation is possible for death and life sentences. Executions are by hanging and are rare--there were only three in 1993 and two in 1994 and are usually reserved for crimes such as political assassination and multiple murders. (www.mongabay.com). Almost a decade later, executions of Ajmal Kasab involved in Mumbai serial blasts and Afzal Guru involved in Parliament attack in New Delhi, were carried out on 26.11.2012 and 09.02.2013, respectively.

1.8.1. CRIMINAL PROCEDURE CODE 1973

Courts of law try cases under procedures that resemble the Anglo-American pattern. The machinery for prevention and punishment through the criminal court system rests on the Code of Criminal Procedure of 1973, which came into force on April 1, 1974, replacing a Code dating from 1898. The Code includes provisions to expedite the judicial process, increase efficiency, prevent abuses, and provide legal relief to the poor. The basic framework of the Criminal Justice System, however, was left unchanged.

Constitutional guarantees protect the accused, as do various provisions embodied in the 1973 code. Treatment of those arrested under special security
legislation can depart from these norms, however. In addition, for all practical purposes, the implementation of these norms varies widely, based on the class and social background of the accused. In most cases, police officers have to secure a warrant from a magistrate before instituting searches and seizing evidence. Individuals taken into custody have to be advised of the charges brought against them, have the right to seek counsel, and have to appear before a magistrate within twenty-four hours of arrest. The magistrate has the discretionary powers to release the accused on bail. During trial a defendant is protected against self-incrimination, and only confessions given before a magistrate are legally valid. Criminal cases usually take place in open trial, although in limited circumstances closed trials occur. Provision for appeal to higher courts exists (www.mongabay.com).

India has an integrated and relatively independent court system. At the apex is the Supreme Court, which has original, appellate, and advisory jurisdiction. Below it are eighteen High Courts that preside over the states and union territories. The High Courts have supervisory authority over all subordinate courts within their jurisdictions. In general, these include several district courts headed by district magistrates, who in turn have several subordinate magistrates under their supervision. The Code of Criminal Procedure established two categories of magistrates, namely, the Judicial Magistrates and the Executive Magistrates, the former being under the control of the High Court and the latter under the control of the State Government. Broadly speaking, functions which are essentially judicial in nature are the concern of the Judicial Magistrates, while functions which are police or administrative in nature are the concern of the Executive Magistrates.

The duties of the executive magistrates include issuing warrants, advising the police, and determining proper procedures to deal with public violence. The judicial magistrates are essentially trial judges. Petty criminal cases are sometimes settled in panchayat courts.

The Criminal Justice System descends from the British model. The judiciary and the bar are independent, although efforts have been made by various quarters to undermine the autonomy of the judiciary. From about the time of Indira Gandhi's
tenure as prime minister, the executive has treated judicial authorities in an arbitrary fashion. Judges, who handed down decisions that challenged the regime in office, have on occasion been passed over for promotion, for example. Furthermore, ‘unpopular’ judges have been given less-than-desirable assignments. Because the pay and perquisites of the judiciary have not kept up with salaries and benefits in the private sector, fewer meritorious members of the legal profession have entered the ranks of the senior judiciary (www.mongabay.com).

Despite the decline in the caliber and probity of the judiciary, established procedures for the protection of defendants, except in the case of strife-torn areas, are routinely observed. The penal philosophy embraces the ideals of preventing crime and rehabilitating criminals. The most neglected is the victim. The victim is the most conspicuous by his / her absence. While the accused is the State’s ‘guest’ and is well protected, the victim is left to defend himself / herself.

1.8.2. THE UNITED NATIONS ORGANISATION AND THE VICTIM:

A detailed study of the victim rights’ as envisaged by the UNO is essential to understand the various discussions on victim rights. Such a study would also throw light on the wide chasm between what has been prescribed and what is being practiced in terms of victim rights, and succour to victims. Victims fall under two categories;

1. Victims of crime 2. Victims of abuse of power

1.9.0. VICTIMS AND DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER 1985

1.9.1. A. VICTIMS OF CRIME

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their Fundamental Rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and
regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

I) Victim is entitled to access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

   a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

   b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national Criminal Justice System;

   c) Providing proper assistance to victims throughout the legal process;

   d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized, where appropriate, to facilitate conciliation and redress for victims (www2.ohchr.org).

II) Restitution – Ensuring (Providing) succour

8. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims (www2.ohchr.org).

III) Right to get compensation

12. When compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to:

a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

IV) Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted.

1.9.2. B. VICTIMS OF ABUSE OF POWER

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their Fundamental Rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

2. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include restitution and/or compensation, and necessary material, medical, psychological and social assistance and support.
3. States should consider negotiating multilateral international treaties relating to victims.

4. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts. (www2.ohchr.org)

1.10.0. MURDER - HOMICIDE

Homicide has been studied and analyzed from many different standpoints. Different theoretical and explanatory approaches result in different emphases and conclusions. The search for etymology of homicide has resulted in some interesting if rather bizarre conclusions, depending on the researcher's focus. Homicide has been linked to such diverse phenomena as youth, unemployment, alcohol, chromosomes, mental illness, the weather, magnetic fluctuations, latitude and even the lunar cycle (Lunde, 1975).

Homicide is an act of a human killing another human. Murder, for example, is a type of homicide. It can also describe a person who has committed such an act. Homicide is not always a punishable act under criminal law, and is different from murder, from a formal legal point of view.

1.10.1. JUSTIFIABLE HOMICIDE

The concept of justifiable homicide in criminal law stands on the dividing line between an excuse, justification and exculpation. It differs from other forms of homicide in that due to certain circumstances, the homicide is justified as preventing greater harm to innocents. A homicide can only be justified if there is sufficient evidence to suggest that it was reasonable to believe that the offending party posed an imminent threat to the life or wellbeing of another (www.deathpenaltyinfo.org).

1.10.2. CRIMINAL HOMICIDE

Criminal homicide takes several forms and includes certain unintentional killings. The crime committed in a criminal homicide is determined by the state of
mind of the defendant and statutes defining the crime. Murder, for example, is usually an intentional crime. In some jurisdictions, certain types of murders automatically qualify for capital punishment (www.deathpenaltyinfo.org).

Varying by jurisdiction, a homicide that occurs during the commission of a felony may constitute murder regardless of the felon's mental state with regard to the killing. This is known as the felony murder rule. Much abbreviated and incomplete, the felony murder rule says that one committing a felony may be guilty of murder if someone, including the felony victim, a bystander or a co-felon, dies as a result of his acts, regardless his intent—or lack thereof—to kill.

Criminal homicides also include voluntary and involuntary manslaughter. The mental state of the perpetrator of these crimes differs from that of one who commits murder. Although suicide is not a form of homicide, abetting in another's suicide may constitute criminal homicide, as codified, for instance, in California Penal Code Sec. 401 (www.leginfo.ca.gov).

1.10.3. STATE SANCTIONED HOMICIDE

Homicides may also be non-criminal when conducted with the sanction of the state. The most obvious examples are capital punishment, in which the state determines that a person should die. Homicides committed in action during war are usually not subjected to criminal prosecution either. In addition, members of law enforcement entities are also allowed to commit justified homicides within certain parameters which, when met, do not usually result in prosecution (www.deathpenaltyinfo.org).

1.10.4. CULPABLE HOMICIDE NOT AMOUNTING TO MURDER

Culpable homicide is not murder, if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender having taken undue advantage, or acted in a cruel or unusual manner. It is immaterial in cases which party offers the provocation or commits the first assault (www.indiankanoon.org).

Murder (defined under Section 300) and culpable homicide (defined under Section 299) are two offences under the Indian Penal Code. Section 299 and Section
300 IPC, deal with the definition of culpable homicide and murder respectively. Section 299 defines culpable homicide as the act of causing death; (i) with the intention of causing death or (ii) with the intention of causing such bodily injury as is likely to cause death or (iii) with the knowledge that such act is likely to cause death. The bare reading of the section makes it crystal clear that the first and the second clause of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not intention. Both the expression "intent" and "knowledge" postulate the existence of a positive mental attitude which is of different degrees. The mental element in culpable homicide i.e. mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed. Section 300 IPC, however, deals with murder although there is no clear definition of murder provided in Section 300 IPC. It has been repeatedly held by this Court that culpable homicide is the genus and murder is species and that all murders are culpable homicide but not vice versa. Section 300 IPC further provides for the exceptions which will constitute culpable homicide not amounting to murder and punishable under Section 304. When and if there is intent and knowledge then the same would be a case of Section 304 Part I and if it is only a case of knowledge and not the intention to cause murder and bodily injury, then the same would be a case of Section 304 Part II. The aforesaid distinction between an act amounting to murder and an act not amounting to murder has been brought out in the numerous decisions of this Court (www.legalperspectives.blogspot.com).

This can best be understood if Sections 299 and 300 of the Code are noticed side by side:

a) With the intention of causing death
b) With the intention of causing such bodily injury as is likely to cause death
c) With the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused.
d) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of cause death.

e) With the knowledge that the act is likely to cause death

f) With the knowledge that the act is so immediately dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and there is no excuse for incurring the risk.

The distinguishing feature is the *mens rea* (the intention). What is pre-requisite in terms of clause (2) of Section 300 is the knowledge possessed by the offender with regard to the particular victim being in such a peculiar condition or state of health that the intentional harm caused to him is likely to be fatal. Intention to cause death is not an essential ingredient of clause (2). When there is an intention of causing a bodily injury coupled with knowledge of the offender as regards likelihood of such injury being sufficient to cause the death of a particular victim would be sufficient to bring the offence within the ambit of this clause (www.indiankanoon.org).

A) **Essential ingredients U/S 302 IPC:** - An offence under section 302 has following ingredients.

1. That the death of some human being was caused

2. That such death was caused by the accused or was the consequence of the act of the accused.

3. That the accused did so
   a) With the intention of causing death, or
   b) That the accused knew that his act was likely to cause death; or
   c) The injury (inflicted or caused) by the accused was sufficient in the ordinary course of nature to cause death.

B) **Evidence:** - For prosecution - In order to bring home the charges leveled against the accused under section 302, the prosecution has to establish beyond reasonable doubt:

   a) That the death of some human has taken place;

   b) That such death was neither suicidal nor accidental but it was homicidal;
c) That it was the accused whose act or the consequence of his act, caused such death;

d) That the accused had no legal excuse or defense for causing such death or for causing such injury.

e) That the accused did such an act:
   i) With the intention of causing death; or
   ii) With the intention of causing such bodily injury,
       a. As the accused knew it likely to cause death; or
       b. That the accused caused death by doing an act which he knew, in all the probabilities, to cause death, or;
       c. The accused caused such bodily injury to such person as was likely to cause death.

C) Procedure: - The offence can be tried only in the session’s court as a warrant trial. It is cognizable, non-bailable and not compoundable and tried within the jurisdiction where the offence was committed.

Culpable homicide is genus, murder is its species. The culpable homicide, excluding the special characteristics of murder, would amount to culpable homicide not amounting to murder. The Code recognizes three degrees of culpable homicide. When a culpable homicide is of the first degree, it comes within the purview of the definition of Section 300 and it will amount to murder. The second degree which becomes punishable in the first part of Section 304 is culpable homicide of the second degree. Then there is culpable homicide of third degree which is the least side of culpable homicide and the punishment provided for is also the lowest among the punishments for the three grades. It is punishable under the second part of Section 304. The questions which are required to be posed are

1) Whether the bodily injuries found on the deceased were intentionally inflicted by the accused; and if so,

2) Whether they were sufficient to cause death in the ordinary course of nature.
If both these elements are satisfied, the same would amount to murder. However, when the court is beset with a question as to whether the offence is murder or culpable homicide not amounting to murder, the fact involved must be examined having regard to (1) whether the accused has done an act which caused the death of another; (2) if a causal connection is found between the act of the deceased and the death, the relevant question would be whether the act of the accused amounts to culpable homicide as defined in Section 299; and (3) if the answer thereto again is found to be in the affirmative, the question would be whether in the facts of this case, Section 300 or any of the exceptions contained therein would be attracted. In this case, it has been found by both the courts that the offence committed by the accused does not amount to culpable homicide amounting to murder.

To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300: First, it must establish, quite objectively that a bodily injury is present; Secondly, the nature of the injury must be proved; these are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional. Once these three elements were proved to be present, the enquiry can be preceded further. Fourthly, it must be proved that the injury described should have been caused due to the elements described herein. (www.indiankanoon.org).

1.11.0. NEED FOR THE STUDY

The U.N Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 classifies the rights of victims into four categories. The first category of rights is the ‘Access to Justice and Fair Treatment’. According to this category of rights, Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided by the national legislation, for the harm that they have suffered. Judicial and administrative mechanisms should be established and strengthened, where necessary, to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. The
Responsiveness of judicial and administrative processes to the needs of victims should be facilitated by a few mechanisms.

The mechanisms are: 1) informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information. 2) Allowing the views and concerns of victims to be presented and considered at appropriate stage of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national Criminal Justice System. 3) Providing proper assistance to victims throughout the legal process. 4) Taking measures to minimize inconvenience to victims by protecting their privacy, when necessary and ensure their safety, as well as that of their families and witnesses on their behalf from intimidation and retaliation. 5) Taking steps to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims. (Compendium of U.N.1992). 6) Instituting informal mechanisms for the resolution of disputes including mediation, arbitration and customary justice or indigenous practices, where appropriate to facilitate conciliation and redress for victims (www.unodc.org.)

A person may be considered a victim under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The “victim” also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

This U.N. Declaration is the first major effort by the United Nations to spell out specifically the rights of victims of crime and abuse of power and obligation of the Nations and Governments to protect and ensure these rights. The rights of the victims have been classified and brought under four specific heads under the Declaration.

A Roman doctrine states “it was better to let the crime of a guilty person go unpunished than to condemn the innocent.” In simple terms it means that it is worse
to convict innocent people than to acquit guilty people. In the US Supreme court case from 1895, Coffin Vs U.S, Justice White interpreted this doctrine and opined that it was wrong to morally compare two phenomena presupposing that such a thing is possible with respect to some common moral standard. It would be grossly inadequate to quantify certain conceptions of criminal justice and state that it is better to reduce the number of false convictions rather than to reduce the number of false acquittals. Despite the lack of sound rationale as evidenced by Justice White’s arguments, many Criminal Justice Systems including the Indian Criminal Justice System continue to believe that the Roman doctrine is sound.

In an essay that analyzes this doctrine, Vidar Halvorsen provides a perfect analogy in statistics wherein the false conviction is analogous to Type 1 errors or the error of accepting a false theory and false acquittals are analogous to Type 2 errors or the error of rejecting a true theory. Any attempt to reduce Type 1 error increases the probability of Type 2 error. Accordingly, an attempt to reduce the number of false convictions by raising the threshold of evidentiary support for any conviction is likely to increase the number of false acquittals. The Criminal Procedure Code 235 (1) stresses that the threshold of evidence be raised beyond reasonable doubt so as to reduce the risk of faulty convictions. By raising the standard of proof, more criminals (murderers) are likely to be acquitted, weakening the in-capacitative and deterrent impact of the Criminal Justice System and thus increasing the overall risk of being such acts of crime murder. On this basis, the researcher probed the reasons for acquittal of the examined murder cases in the three southern districts of Tamil Nadu in a certain span of time.

The current study is part of this analysis and is restricted to the districts of Tirunelveli, Tuticorin and Kanyakumari. Issues that this researcher attempts to examine are:

Adequacy of the depth of the content of the judgment of each examined murder cases in Tirunelveli, Tuticorin and Kanyakumari Districts with respect to the credence given to Mens-rea, preparation, attempt and commission of the crime which led to the circumstance while pronouncing the judgment.
1. Whether to formulate the major reasons of acquittals in each examined murder cases in Tirunelveli, Tuticorin and Kanyakumari Districts?

2. Is there any difference between the demographic variables with regard to the reasons for acquittal of the accused and the available indirect victims of examined murder cases of Tirunelveli, Tuticorin and Kanyakumari District?

3. Is there any association between the demographic variables with regard to the reasons for acquittal of the accused and the available indirect victims of examined murder cases of Tirunelveli, Tuticorin and Kanyakumari district?

4. Is there any correlation between the different reasons for acquittal in Tirunelveli, Tuticorin and Kanyakumari district?

1.12.0. ORGANIZATION OF THE STUDY

The research report consists of seven chapters. The next chapter, chapter two, deals with the review of literature related to access to justice, acquittals and murder trials. In chapter three, the profile of Tirunelveli, Tuticorin and Kanyakumari districts, which is the study area, is explained. In chapter four, the methodology is described. It includes procedure of the study, variables of the study; tool constructed and used, sample selected and procedure for data collection. Analysis and interpretation of the results are presented in chapter five. Chapter six gives the recommendations and suggestions for further research on this subject; chapter seven represents the summary and conclusion of the study. Bibliography and appendices are given at the end.