“To achieve lasting Literature, fictional or factual, a writer needs perceptive vision, absorptive capacity, and creative strength”.

- Lawrence Clark Powell

Chapter Two

REVIEW OF RELATED LITERATURE

2.0.0. INTRODUCTION

A literature review is an evaluative report of information found in the literature related to the selected area of study. The review should describe, summarise, evaluate and clarify this literature. It should give a theoretical base for the research and help determine the nature of the research. Works which are irrelevant should be discarded and those which are peripheral should be looked at critically.

The investigator explored literature relevant to the area of study and has grouped them into various sections as follows:

- Studies on Access to Justice
- Studies on Acquittals
- Studies on Murder trials
- Studies on Victims and Offenders
- Studies on Individual Cases of Acquittal – International
- Studies on Individual Cases of Acquittal – State
- Studies on Individual Cases of Acquittal – Tirunelveli, Tuticorin and Kanyakumari Districts

2.1.0. Studies on Access to Justice

Access to Justice and fair treatment is the first category of rights under the U.N Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985. The researcher had gone through the literature and could perceive that the justice system was more prone to favour the offender than the victim by way of procedural delays, disproportionate sentencing, and room for technical flaws both in investigation, forensic findings, etc., punishments were high where the system was
under sharp scrutiny. The system got diluted in rendering justice due to various factors. It is pertinent, in this context, to look at these studies that can contribute to better access to justice for victims. A brief summary of each is given below.

**Garrett (2007)** presented five case studies examining novel aggregative procedures that courts employed to remedy systemic criminal procedure violations such as the lack of proportionality in death sentencing, wrongful convictions, forensic fraud and inadequate indigent representation. He concluded that appropriate use of aggregation can potentially transform criminal adjudication, by providing an avenue to vindicate criminal procedure rights, and by encouraging efforts to create a more efficient, accurate, and fair criminal justice system.

**Sung (2006)** argued that the transformation of justice administration in democratic countries is a transition from a crime control to a due process orientation. In authoritarian states, criminal justice systems rely on a larger law enforcement-punishment apparatus for order maintenance and produce higher rates of arrest, prosecution, conviction, and incarceration. By contrast, in liberal democracies, justice is sought as the defense of civil liberties through the due process of law, which leads to a heavier investment in the judiciary and a higher rate of case attrition in the criminal justice process. The analysis of the United Nations data refutes the hypothesis of larger police and prison workforce in authoritarian countries and larger judicial staff in liberal democracies. Instead, democracy increases both the personnel strength of the courts and that of the police and the prisons. The author proposed that there exists a strong relationship between democracy and increased criminal case attrition.

In criminal law, fundamental constitutional rights to an individual in court sharply limit the occurrence of procedural aggregation, such as joinder, during trials. Courts now aggregate criminal cases, and they do so without violating constitutional rights, by joining cases only before trial and during appeals.

**Meernik (2003)** examined the judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY) to evaluate whether there was access to justice. Two main factors considered included the accused access to fair trial and the
courts premises for decisions. He concluded that ICTY judges followed a "legal" model and punishment was based primarily on the gravity of the crimes committed and the defendant's level of responsibility in the political and military chain of command. Political factors largely did not explain verdicts or sentences.

O'Neill (2003) noted how politicization of a system could deter access to justice. He suggested certain changes to California criminal justice agencie’s administrative practices and their communication of statistical information too. These were made to avert a crisis. Reform bills were ushered in which ended effectively professional criminal rehabilitation in quantitative evaluation studies. This in turn shifted administration toward bureaucratic controls.

Roberts (2003) looked at the moral justification of a statute of limitation on injustice. According to him, to claim a moral statute of limitations on injustice is to claim a temporal limit on the moral legitimacy of rights to rectification. A moral statute of limitations on injustice establishes an amount of time following injustice, after which claims of rectification can no longer be valid. Such a statute would put a time limit on the life of all moral rights to rectification. Ascribing a right to rectification for an injustice is a requirement of justice. The temporal limit called for by a statute of limitations on injustice is a constraint on that requirement. The idea of a statute of limitations on injustice is morally justified only if there are good reasons for accepting this constraint. He argues that the idea of a moral statute of limitations on injustice is not justified, when there is a lack of good reasons for imposing the constraint on justice.

Jackson (2003) pointed to an unresolved tension, apparent in a white paper on Justice for all, between instrumentalist crime control concerns and intrinsic concerns for the rights of victims and witnesses. He argued that many of the proposals contained in the latest Criminal Justice Bill are so preoccupied with rebalancing the system away from offenders, that they risk doing injustice to defendants, with little tangible benefit to victims and witnesses in terms of rights and remedies.

Domingo (1999) in an assessment of the Mexican Justice System in the face of a transforming Mexican state, highlights the failure of the Judicial apparatus to
meet minimally adequate standards of justice administration and rights protection. Highly deficient legal aid, inadequate number of lawyers, large geographical distances separating populations from courthouses, high cost of litigation and corrupt practices hampered the right of access to justice for the layman in Mexico.

**Hardin (1999)** conceived the idea of distributive justice through material equality as a form of access to justice. The author suggests using the example of medieval life in Bodo village wherein villagers knew enough about each other to govern relations through norms, including, when necessary, a norm of charity. In more complex modern societies, economic destitution cannot be handled so well by individual charity, but could be handled by states.

**Suresh (1996)** described the urgent need to sensitise the criminal justice personnel on the issue of human rights if many of UN declarations, Supreme Court verdicts, and reports of national and international human rights agencies are to be made enforceable. The paper argued that harsher punishments do not automatically lead to lower crime rates.

**Foote (1992)** found that the Japanese criminal-justices system was benevolent in that, its goal was to achieve reformation and reintegration into society, through lenient sanctions, tailored to the offender's particular circumstances. The system was paternalist in that it allowed substantial discretion to the state in both gathering and using information about the offender and the offence. While recidivism rates indicated that many offenders were indeed reintegrated into society, the system had a dark side, permitting intrusions into the offenders' interests in autonomy and due process. Recognizing that benevolent paternalism came at a price and could maintain order only under certain societal and cultural conditions, Foote suggested ways in which the Japanese criminal-justice system could adapt to change.

**Davis (1982)** conducted two experiments aimed at eliminating sources of unnecessary continuances in a criminal court. In both experiments, information about the availability of witnesses was provided to particular criminal court decision-makers who were believed to have incentives, to make effective use of it. In each experiment, the information provided led to an increase in case-by-case decisions
consistent with interests of criminal justice organizations in expeditious case processing.

Haney (1982) examined the influence of psychological individualism on nineteenth-century law and criminal justice policy. He explored the implications and consequences of that domination by first examining the general conditions under which individualism flourished in the United States, and then focusing on specific criminal justice policies that were premised on this individualistic paradigm. The study suggests that individualistic assumptions about human behaviour were incorporated into what became intractable legal and institutional forms. The study suggests a relationship between law and human science during this period, and the way in which criminal justice policies were advanced as scientific doctrines. The study also briefly discusses the role played by psychology in criminal justice policy since the nineteenth-century, and the recent resurgence of psychological individualism.

Professor Levine (1975) reports a study comparing the performance of private criminal lawyers and Legal Aid Society lawyers in Brooklyn, New York. It noted various earlier findings, and proposed certain actions to make the right to counsel more effective. Contrary to expectation, the performance of the legal aid lawyers turned out to be far from inept or token representation. They were surprisingly conscientious and effective advocates. However, their clients lacked confidence in them, so preferred to plea bargain, rather than going to trial. The study reported that therefore client perception is a key difference between private and legal aid attorneys.

Blumstein (1967) analyzed studies concerning the potential role of systems analysis in the Criminal Justice System. He compared alternative technological investments by police departments, a model of the apprehension process and identified bottlenecks in moving cases through a court, through the use of a computer simulation of the court. A model of the total criminal justice system raised basic questions about the escalation of seriousness of crimes in criminal careers. The study
showed considerable potential for more wide-spread application of systems analysis throughout the criminal justice system.

2.3.0. Studies on Acquittals

Bhagavathy & Shekhar (2012) examined a random sample of acquitted homicide cases from Tuticorin district and compiled 44 reasons for acquittal which hinted at underlying threads of commonality. The study indicated that further inquiry is needed into the reasons for acquittal to understand whether the victims had sufficient access to justice. The study found no effect of demographics on reasons for acquittal.

The “Economic and Political Weekly” reported that unreliable witnesses, the ease with which retractions from police-recorded-statements have been made, as well as poor capabilities of the prosecutor, have led to decline in the conviction rates in criminal trials in India over the last 45 years, from 60 per cent to as little as 22 per cent. The article made an urgent appeal to amend the section 164 of the Cr.PC to make mandatory the recording of witness’ statements before a magistrate. The report further mentioned that in the Jessica Lal case, the Delhi police filed a new FIR against unknown persons, alleging "destruction of evidence, fabrication of records, shielding of offenders and criminal conspiracy" in the wake of public protests against the acquittal.

Solomon (1987) reported that in the late 1940s the rate of acquittals in Soviet courts started a decline and by the 1970s and 1980s acquittals had almost disappeared. Making an inquiry into the practice of Soviet criminal justice, Solomon found that the system of evaluating the work of investigators, pro-curators and judges in regard to criminal cases and the norms of conduct that resulted from it led to the decline of acquittals. It resulted from the cooperation of judges with the needs of investigators and procurators to avoid incidents of failure for which they would be held responsible. Sometime in the late 1940s both acquittals and returns for supplementary investigation acquired the status of failures for procuracy officials, a status that lasted for at least four decades.
Streichler (1982) in the article, “Double Jeopardy and Federal Prosecution after State Jury Acquittal”, argued that the rationale of the Supreme Court's post-conviction cases cannot be extended to cases involving jury acquittal and that federal reprosecution after state jury acquittal violates the double jeopardy clause. The British Medical Journal reports that in the case of a medical doctor charged with the murder of his patient, the jury found him not guilty of such murder. They reached their verdict in 44 minutes on the seventeenth day of the longest murder trial recorded in Great Britain. In his summing-up the Judge referred to "a most curious situation, perhaps unique in these courts," that the act of murder had to be proved by expert evidence; and again: "the medical evidence is the essential part of the case, and perhaps the crucial part."

Baldwin & McConville (1974) examined the acquittal rate of professional criminals in two courts in London. Michael Zander analyzed 1435 cases out of which 200 cases ended in acquittal. In the study, the category of offence, in which the overall acquittal rate was significantly higher than the national average of 15 per cent, was for physical violence (excluding murder and manslaughter but including firearms and robbery), for which the acquittal rate was no less than 31 per cent. Baldwin and McConville critically analyzed Michael Zander’s work and argued, that the study’s conclusion that professional criminals are less likely than others to be acquitted, is of very great significance in discussions both of the workings of the jury system and the rules of evidence in the trial process. However, they state that the data Zander presents fail to support his far-ranging conclusion. Zander (1974) stated that the major findings of his study are: 1. there were few “major” cases in the acquittals. 2. Professional criminals (identified by the nature and extent of their criminal record) were significantly less likely to be acquitted than others in the sample. 3. There was a high proportion of directed or “obvious” acquittals over a quarter. 4. The proportion of perverse acquittals was small-well under 10 per cent. 5. In the great majority of cases, the acquittal was thought by the lawyers, on the evidence before the court, to be entirely justifiable.
Thoresby (1973) commented upon a practice direction wherein it was to consider "normal practice" to award costs to successful defendants in criminal cases. The paper states that such direction asks judges to usurp the jury's function and apply a wholly original standard of proof, in ill-defined circumstances, so as to bring about a result previously unknown in English law. The paper submitted that if second-class acquittals were to be introduced, they should be introduced by Parliament after due consideration, not as a corollary to a practice direction issued by the judges, and should take the form of a "not proven" verdict by the jury, not a determination by the trial judge. It further submitted, that they should not be introduced and that all acquitted defendants should be treated alike, unless there are truly exceptional circumstances.

Phillips (1961) described the tendency of courts to deny the defendant’s motion for acquittal, despite the insufficiency of evidence. The paper states, that the fundamental characteristic of a trial in the adversarial system is that the party who brings the action has the initial burden of producing evidence in support of his claim. A defendant in civil or criminal need not offer a defense, until this burden has been shifted. Once the party who has brought the action produces sufficient evidence, to carry his case to the jury, however, a defendant remains mute at his peril, since, a verdict may now be returned against him. Theoretically, a defendant can test the sufficiency of the evidence at the close of his opponent's case-in-chief by a motion for directed verdict in a civil trial, or by a motion for acquittal in a criminal trial. If at this time, the evidence is insufficient, the court is supposed to terminate the action in favor of the defendant.

2.4.0. Studies on Murder Trials

Doak (2005) stated that victims in common law jurisdictions have traditionally been unable to participate in criminal trials, for a number of structural and normative reasons. They are widely perceived as 'private parties', whose role should be confined to that of witnesses, and participatory rights for such third parties are rejected, as a threat to the objective and public nature of the criminal justice system. However, recent years have witnessed both a major shift in attitude in
relation to the role of victims within the criminal justice system, and a breakdown in
the public/private divide in criminal justice discourse. Doak considered the standing
of the victim within the criminal trial against the backdrop of such changes, and
recommended, a more radical course of reform, that would allow victims to
participate actively in criminal hearings, as they are able to do in many European
jurisdictions. According to him, major challenges for criminal justice in the next
decade would be, the task of redefining the developing relationships between the
victim, the accused, and the state in such a way, that it takes on board current trends
in human rights and criminal justice discourse, towards a more inclusive model of
criminal justice.

Acquittals in murder cases are now a common occurrence in the Indian
Criminal Justice system. A few are listed below:

a. Almost five years after a former sarpanch, Ananta Padale of Mangaon in
Mulshi taluka, was shot dead at Ahinsa chowk in Chinchwad, the court of
special judge Shirish Gadge, acquitted 12 accused, due to discrepancies in the
prosecution's evidence.

b. The assistant sessions judge at Panaji acquitted three accused charged for
attempt to commit murder of Shaikh Imtiyaz, with sword and hockey sticks at
St Inez in 2006.

c. The Delhi High Court acquitted a suspended IPS officer, Ravi Kant Sharma,
and two others accused of killing journalist Shivani Bhatnagar in 1999, on the
basis of lack of sufficient evidence.

d. Four youths accused of kidnapping and killing teenager Adnan Patrawala in
Mumbai in 2007, were acquitted by a local court, on account of lack of
evidence.

e. In the Parvathi Vs State (2010) two women, a mother and daughter accused of
murdering Babu alias Ilaikadai Babu, a notorious criminal involved in several
criminal cases, were acquitted on the basis of lack of evidence.

f. Jessica Lal was a model in New Delhi, who was working as a celebrity
barmaid at a crowded socialite party, when she was shot dead at about 2 am
on 30 April 1999. Dozens of witnesses pointed to Siddharth Vashisht, also
known as Manu Sharma, the son of Vinod Sharma, a wealthy and
influential Congress-nominated Member of Parliament from Haryana, as the
murderer. In the ensuing trial, Manu Sharma and a number of others were
acquitted on 21 February 2006. The judge believed that the police had failed
to provide a sufficient explanation of the chain of events which led to the
killing.

g. A TADA designated court in Guwahati acquitted United Liberation Front of
Assom (ULFA) chairman Arabinda Rajkhowa in a murder case dating back to
1990. Rajkhowa was acquitted on the basis of the benefit of doubt in the case
relating to the murder of noted businessman Surendra Paul.

h. Mahendra Sadhu and Hardik Goel, the two youths accused of killing the 22-
year-old MBA student Priyanka Ramanuj were acquitted by a sessions court.
Principal Sessions Judge G N Patel, who passed the order, criticised the police
for failing to present evidence to the court.

i. In another case a local court in Chandigarh acquitted a man who had been
accused of attempting to kill his wife, for want of evidence.

Studies reportedly show that of late there is a tendency to acquit murder cases
on flimsy grounds. Drawing upon Mikhail Bakhtin's theory of the dialogic, Umphrey
(1999) explored the production of legal meanings about criminal responsibility in the
19th and early 20th centuries. She examined the honor-based defense of the
"unwritten law" as it was articulated in relation to the formal law of provocation in
the 19th century, and in the 1906 trial of Harry K. Thaw for the murder of Stanford
White. Umphrey argued that meanings about criminal responsibility emerged from a
process of discursive conflict and negotiation between the domains of legal
consciousness and formal law. At trial, competing narratives of indictment and
exoneration, literally enact that dynamic process, so that trials may be said to be the
materialization of the dialogic production of "law" in its broadest sense.

Shors (1998) stated that acquittal enhancements occur when the government
charges a defendant with committing a crime, the jury acquits the defendant of such a
charge, yet subsequently the defendant's acquitted conduct forms the basis of a sentence enhancement. In United States v. Watts, the Supreme Court upheld acquittal enhancements over a constitutional challenge based on double jeopardy. Moreover, the Court upheld acquittal enhancements without receiving full briefing or hearing oral argument. Shors challenged the Court's decision to decide the case in such a superficial fashion. He suggested a narrow reading of the majority opinion and argued that Watts does not foreclose challenges based on due process and the right to a jury trial. He argued that acquittal enhancements violate due process when proved by a mere preponderance of evidence and that acquittal enhancements distort the complexity of compromise guilty verdicts, ignore the presence of holdout jurors, circumvent the jury's decision to acquit, and thwart the exercise of legitimate jury nullification. As a result, acquittal enhancements unconstitutionally impinge on the jury's power and the defendant's right to a jury trial.

Bryan (1997) examined the classic short story “A Jury of Her Peers”. Relying on historical documents and contemporaneous newspaper reports, Bryan described the actual case that inspired Susan Glaspell to write her work of fiction: the 1901 trial of Margaret Hossack, who was convicted of murdering her husband with an axe while he lay asleep in bed. During the trial, neighbors testified that Margaret Hossack had been abused during her marriage and had sought their help on numerous occasions. That evidence was heavily relied on by the prosecution in arguing that Margaret Hossack had a motive for the crime. The story of Margaret Hossack, both during the trial and thereafter, raised the question: whether justice will be denied until we recognize the biases and assumptions that shape the narratives told in the courtroom.

In Dowling v. United States U.S. 342 (1990) (Randall, 1992), the Court chose to apply strictly collateral estoppel doctrine and to protect the judicial interest in truth determination at the expense of defendants' double jeopardy rights by holding that acquittals should not be permitted to preclude all future relitigation of the facts and issues raised in the first trial. The significance of Dowling decision is that defendants have little protection from the unfair burden of relitigating conduct for which they have already been acquitted. Randall’s study proposed that the interests of criminal
defendants can be better reconciled with the Dowling decision, by allowing them to request supplemental interrogatories with acquittals. Supplemental interrogatories would make criminal collateral estoppel work more efficiently, by protecting determinations of innocence and by preventing multiple litigation, thereby conserving judicial resources and alleviating double jeopardy concerns, without interfering with the state's interest in truth determination or allowing defendants, the ongoing benefit of erroneous acquittals.

Smith (1991)'s analysis of a case study on a sensational murder case in Lincoln in 1883 showed that local rural criminal justice system, despite using all its resources, often failed to convict persons, for even the most serious offenses. The low conviction rate resulted from the seriousness of the penalties, jury nullification, the inadequacies of law enforcement, legal protections offered to defendants even in the nineteenth century. Those small-town lawyers knew more than just the newest, most applicable legal precedents. They also knew the nature of their rural society, which gave the benefit of the doubt to a prosperous defendant and limited sympathy to a victim.

Driggs (1989) analysed the struggles of the Mormon community to secure justice through the murder case of a Mormon missionary, Joseph Standing in Georgia in 1879. The defendants were acquitted owing to a high hostility in the community against Mormons and a severely prejudiced jury. The Judges instructed the jury "That if two or more persons combine to do an unlawful act, not having as its object the destruction of human life, and in the commission of such an act, one of those engaged goes beyond the original purpose and intention, and commits a homicide in any of its degrees, he alone is guilty of the crime as principles or accessories." Under such an instruction in order to convict, the jury must have been convinced beyond a reasonable doubt that the individual defendant had intended to kill the victim himself, a difficult finding with over twenty bullet wounds in the body, from a variety of weapons.

Breton & Wintrobe (1986) looks into establishment of guilt of subordinates in large organizations. The study discusses this question by Hannah Arendt, in her
book on Adolf Eichmann. He consistently claimed innocence on the ground that he was only following orders. Arendt accepted this picture of the regime, but nevertheless indicted him for "crimes against humanity." The study suggests that this model of the Nazi bureaucracy is false: in the Nazi bureaucracy of order, as in other large bureaucracies, subordinates competed with each other to advance the goals of superiors they trusted. In this context, their guilt is easily established.

The importance of circumstances and its interactions with the human psyche is evidenced in a murder case of 1901, the Lichtenstein Murder Case (Schmier, 1986). Schmier analyses the psyche of a defense lawyer through two murder trials, in one of which the lawyer in question represented the defense. While as a defense lawyer he successfully gets the Jewish defendant acquitted as a politician, in later years as a politician he stokes the flames of anti-semitism leading to the lynching of the defendant.

Moore (1895) in a critique of the American Criminal Justice System that allows a defendant umpteen appeals, provided the following information. According to him, in the primitive times, ‘the man who was measurably secure in the possession and use of his lands and his chattels, was apt to be painfully insecure in the enjoyment of those rights that we esteem the dearest and most valuable’. If fore-doomed by the authorities, it was a matter of little consequence that the offense was not within the letter or the spirit of some positive law, for, nevertheless, his (the defendant) judges could punish him by a law made for the case, and accordingly he was submitted to the mercy of the court in a sense not dreamed of when those words are now used’. Moore asserts, today the Criminal Justice System is individual-friendly. ‘The definition of offenses, the settlement of the doctrine that no man should be tried, convicted or punished except in strict pursuance of the law in force at the time of the commission of the alleged offense, and the erection of an impassable barrier between the legislator and the judge’. It is the assertion of the divine right of the individual. It is the proclamation of individual liberty. But today this liberty has extended beyond a limit, allowing the defendant opportunities to go for appeal upon appeal. Moore provides an example where a defendant ‘Benton’ appealed four times. ‘The defendant was not
benefited in the end, for the fourth trial resulted in a longer sentence than any of the previous trials, but that fact in no way compensates for the demoralization and expense entailed upon society, and in no way excuses the system under which an undoubtedly guilty man, taking all the chances, in the course of a protracted fight, more than once very nearly secured the freedom to which he was not entitled.

**Roper & Flango (1983)** in a study based on state criminal trial data collected by the Court Statistics and Information Management Project at the National Center for State Courts, re-examined some of the findings reported in “The American Jury”. The data indicated, that the number of criminal jury trials had increased only about 70% between 1955 and 1978. Nevertheless, two-thirds of felony trials were conducted before juries. Despite common myths pointing to judge leniency towards criminals, the data showed that most defendants, who were tried, got convicted. They found that juries were more likely to convict felons than were judges, and judges were more likely to convict non-felons than were juries. This finding questions the Kalven and Zeisel conclusion that, "the reason for disagreement [between judges and juries] are on the whole not crime specific."

**Baldwin & MedConville (1979)** in a study based on jury trials heard in the Crown Court at Birmingham, England, together with additional material drawn from a sample of cases in London showed that doubts about both acquittals and convictions by jury, were expressed with a surprising frequency. An examination of the remedies available to correct miscarriages of justice demonstrated the ineffectiveness of current appeals procedures. They concluded that it was necessary to evaluate the jury's function within a political context. The jury existed simply to give a true verdict according to the evidence, consonant with the prevailing legal rules. The notions of efficiency, competence and precision were not necessary, or even desirable criteria for assessment: the test was rather the acceptability (to others) of the continued existence of the institution itself. The workings of the jury could not be evaluated independently of its role definition.

In a comment on the difference between American and English system of murder trials, **White (1925)** said the principal difference between these two systems
lay in the speed with which the accused person was arrested and brought to trial, the short time the trial took and the immediate execution of sentence. White points out that in a murder trial, the judge in America reads a number of instructions on points of law to a jury, who are not trained men and who are quite ignorant of all the things he is reading. He does not assist upon the different facts set before them, upon the conflicting views of these facts, upon the disputed arguments of the various counsel in the case, all of which have filled the minds of the jury with doubt, hesitation and perhaps distrust. On all these matters where the jury must want impartial guidance and help, the American judge is not allowed to assist them. In England, the judge is impartial, is highly trained in the rules of evidence and in the value of statements, he has taken part as counsel in many similar trials and knows well how to weigh conflicting views of facts. His duty is to go over the evidence carefully, pointing out to the jury, the important matters on each side, showing how to weigh their value, what may be said for or against any special view urged by either counsel. The judge's advice has always great weight with a jury, but if he tries to go too far, if he tries to tell them what kind of verdict they ought to find, the jury invariably take the bite in their teeth and go the other way. They like assistance, but they quickly resent any dictation, consequently you hear the judge frequently say, "But after all, gentlemen, the facts are for you and it is you alone who must decide.

Quigley (1925) stressed the importance of cross examination saying "error, weakness, untruths cannot be hidden, but are bound to be disclosed under skilled cross-examination when other methods might not avail. The art of showing the inconsistency of the testimony of a witness is the acme of cross-examination; to later rebut the witness by a thoroughly competent expert, whose testimony, because of the truth of his cause, cannot be shattered; is the acme of court trial procedure".

2.5.0. Studies on Victims and Offenders

Carcach (1997) did an exploratory analysis of youth involvement in homicide, using data from the Homicide Monitor Database (Australian Institute of Criminology). Youth are involved in about one out of three homicides occurring in Australia, either as victims or offenders. The study found that for all the homicides
that occurred during the period 1989-1996, nearly 35 per cent of offenders were between 10 and 24 years. About one in three victims of homicide (28 per cent) was aged below 25 years. Youth, who constitute about 30 per cent of the total population, were involved in about one of three homicides occurring each year in Australia, either as victims or offenders.

2.6.0. Studies on Individual Cases of Acquittal – International

O. J. Simpson Vs. Nicole Brown Simpson and Ronald Goldman(1995) The Criminal trial of O. J. Simpson for the murders of Nicole Brown Simpson and Ronald Goldman has been called "a great trash novel come to life". Simpson was charged with the double murder of his wife Nichole and Ronald Goldman, an acquaintance of his wife. The injury on the hand sustained by Simpson could not be properly explained by Simpson.

From the standpoint of the police, the interview was remarkably inept. Officers did not ask obvious follow-up questions and whole areas of potentially fruitful inquiry were ignored. So unhelpful was this interview that neither side chose to introduce it into evidence at the trial. Thus the longest trial in the history of California that tested the nerves of the jury, ended in acquittal.

2.7.0. Studies on Individual Cases of Acquittal – State


According to the prosecution, Selvaraj, a traffic police constable, had stopped a vehicle carrying weapons in the communally sensitive Ukkadam area of Coimbatore city on November 27, 1997.

Later, three persons who had been detained by Selvaraj led a mob and hacked him to death. This in turn led to indiscriminate attacks on Muslim houses and businesses, rioting, arson and police firing in several places. This attack is believed to have triggered the Coimbatore serial blasts in February 14, 1998, which claimed 60 lives.
But the case was acquitted by the Supreme Court on a technical ground. The ground for acquittal for this: The practice of recording the FIR on all the six leaves bearing the same serial number pertaining to case was not followed; The Selvaraj case was registered on the last three leaves of the earlier case that had been registered. Thus for one serial number, there were two FIRs. Overlooking all the other evidences that supported the case, the case was acquitted on this flimsy technical ground.

2.8.0. Studies on Individual Cases of Acquittal – Tirunelveli, Tuticorin and Kanyakumari Districts

2.8.1. TIRUNELVELI DISTRICT

Iyappan v/s. state of Tamil Nadu (2007) V.K.Pudur PS Cr.No. 91/07 U/S/364, 302 IPC. The accused was having illicit intimacy with one Balanagammal, w/o Ramesh, who had a five-year-old child named Mukilan. The child was a hindrance to the pair in their private affairs. Hence, the accused, to do away with the child, had kidnapped him while he was playing in the street and threw him in a ground level well resulting in the child’s death. Fifteen witnesses were examined in this case. The observation of the case is as follows; PW1 (Prosecution Witness) has deposed in favor of the prosecution. But he was not an eye witness. He in his complaint has not specified the neighbors who told him about his son’s being with the accused. Witness No.2 did not corroborate with witness No.1 as to the accused taking the deceased in his bi-cycle. Witness No.4 and Witness No.5 were silent about their seeing the accused taking the child in his cycle. The medical report, in no way could directly connect the accused to the crime. The court presumed that the evidence produced was only hypothetical and was not proved beyond reasonable doubt. Hence the case was acquitted.

2.8.2. TUTICORIN DISTRICT

Jegadesh @ Jegadesh Biraveen Kumar Vs. Paulpandi (2002) Puthukottai P.S. Cr.No.345/02, u/s 147,148,120(b), 302 r/w 149 IPC. On 08.11.2002 at about 11.25 a.m, the accused Jegadesh and four others came in a Tata Sumo car TN 69 C 2345, dashed against one Paulpandi, and four of the accused murdered him with aruval and knife, with the common intention to kill, due to previous enmity. In this
case, 21 witnesses were examined. PW1 (Prosecution Witness) was the father, and Witnesses 2 and 3 were sons of the deceased. All three were eyewitnesses. Though they had favored the prosecution, their deposition differed from their 161(3) Cr.PC statements. Further, they contradicted their chief depositions during cross examination. Witnesses No.1 to 3 had stated that they wept, cried and rolled on the injured victim before the death of the victim, but no blood stains were found on their dresses. Witness No.s 4 to 9 (other independent witnesses) did not favour the prosecution. The services of police Dog, Finger Print expert and Photographer were utilized. The court commented adversely on the utilization of the dog squad since the accused are known persons. No photos or report of the dog squad or finger print expert were filed in this case. The FIR contained the names of Munian, Jegadish, Anand @ Maharaj as accused, whereas in the final report, Munian and Maharaj were omitted and Karuvelamuthu and Gunaseelan were included. The averments of the witness No.1 to 3 state that police had reached the SOC (Scene of Crime) 5 minutes after the occurrence, which made it look that the police had commenced investigation before registration of FIR.

Steps taken by police to trace the accused were not known until Accused 4 and Accused 5 were taken into police custody. Accused 1 to Accused 3 were included based on the confessions of Accused 4 and Accused 5. But proof of confession of Accused 4 and Accused 5 was not established through independent witnesses. Delayed dispatch of material objects and important documents to the court was another reason for acquittal. The victim himself was a life convict and was involved in many criminal cases. The charges against the accused were not proved beyond reasonable doubt. Hence the case was acquitted.

2.8.3. KANYAKUMARI DISTRICT

Clausian Vs. Ravi Colachel (2003) PS Cr.no.9/1997, u/s 148, 324, 302 r/w 149 IPC and sec 3 of Exp. Act. Group rivalry existed between Yesurajan Group and Selvaraj Group of Kottilpadu village over drainage issue. Due to this rivalry, on 01.07.1997 at 14.00 hrs, all the 19 accused belonging to one group armed with iron rods, trident, spear and country bombs chased the other group and inflicted injuries.
on PWs (Prosecution Witness) 1, 2, 3, and one Ravi. Due to the injuries sustained, Ravi died in the hospital. Witness No.1 was one of the injured and was also the complainant. He had deposed that he signed in a blank paper (complaint) and that he sustained injuries in a group clash. So the injuries alleged to have been sustained due to country bomb hurled by Accused 1 to Accused 3 were ruled out. Witness 1, 2 and 3 had not specifically mentioned the scene of occurrence during the deposition. During the cross examination, Witness No.2 stated that the occurrence happened outside the coconut grove near the sea shore while they were running. But the Investigating Officer in the observation mahazar and rough sketch had stated that the occurrence was inside the coconut grove. Hence, the court concluded that the occurrence had not taken place as deposed by the witnesses. The incident happened on 07.01.1997 at 1400 hrs. FIR was registered at 23.30 hrs. FIR was sent to the court on 08.01.1997 at 10.30 hrs. The I.O had visited the SOC on 08.01.1997 at 09.00 hrs. But the same I.O had visited the SOC on 07.01.1997 at 19.00 hrs and prepared mahazar in Cr.no. 8/1997 (Counter case). So naturally the I.O would have had knowledge about the occurrence of Cr.no. 7/1997 but had failed to commence investigation immediately. The reason for delay in commencing investigation was not addressed properly in his deposition. So the case ended in acquittal due to perfunctory investigation.

In an effort to understand this increasing spate of acquittals, this researcher decided to study and analyze all acquitted murder cases in the three southern districts of Tamil Nadu. The next chapter will present the profile of the study area.