Chapter - V

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5.1 CONCLUSION AND SUGGESTIONS: In the traditional concept of judiciary, the judge is depicted by an image, where the eyes of the judge are covered by dark cloth with hands holding the balance. This obviously means that the judges are supposed to have a very open mind on every issue without having any personal opinions at all. Further, this also implies that the judges would not allow themselves to be influenced by the events happening around them. Traditionally, it was thought that the judges should live in some sort of isolation, so as to preserve a mind that will be open and remain unprejudiced under any circumstances.

Independence of the judiciary is a cardinal feature of our Constitution. Whatever may be the role of judiciary in some totalitarian and other regimes in certain parts of the world, the traditions and norms which our founding fathers were keen to preserve was to have an independent judiciary. All rights and liberties would be reduced to the level of no more than ornamental pieces in the Constitution unless they can be enforced in the true spirit by the Courts. It is in this context that the independence of judiciary becomes vital and of paramount importance. The Constitution has made elaborate provisions for ensuring independence of the judiciary. The foregoing discussion, however, reveals that the various safeguards enshrined in the Constitution have become illusory with the passage of time. For appointment, promotion and transfer of judges the executive enjoys almost unlimited powers. In all such
cases the final word virtually rests with the Prime Minister. The judiciary is living under threats. One threat emanates from the executive which is bound to take any decision against its liking as wrong. The same is true of politicians. The judiciary is also facing threats from within. The judges have been critical of the system of which they are an integral part. Some judges have gone to the extent by blaming the system for their own failures. Not only this, the judges have frequently tried to run down each other in the public. Whatever may be the motivations behind such moves, the fact remains that such actions of the members of the Bench tend to lower the public respect for the judiciary. Judges while sitting on the judgment seat have often taken political stances. Writing congratulatory letters to the Prime Minister or seeking political favours for their children or family members are some of the instances which cannot be overlooked. Bar’s attitude towards the judiciary has also not been consistent. We have been many protests of the Bar against the Bench. Whatever may be the motivations behind such move, such actions of an enlightened, section of our society endanger the independence of the judiciary. In the end, the author would like to conclude in the inspiring words of Justice Venkataramaiah when he observed: “the ultimate safeguard for the independence of the judiciary has to be sought in the judge himself and not outside and that is the inner strength of judges alone and can save the judiciary”.

The greatest asset and the strongest weapon in the armory of the judiciary is the confidence it commands and the faith it inspires in the minds of the people in its capacity to do even handed justice and keep the scales in balance in any dispute. Judiciary in India has by and large enjoyed immense public confidence. One of the chief reason for this has been the fact that judiciary has generally been manned by persons who were devoted to the cause of justice and performed their duties without fear or favour. Thus, the standards of the Indian judiciary have been a matter of pride to every citizen.
The people have always considered the judiciary as the ultimate guardian of their rights and liberties and this institution has amply stood the test of times. In fact, it is one of the finest institutions that we inherited from the British. But in recent years, the judiciary has been under constant attacks – external as well as internal.

Judiciary in India has by an large enjoyed immense public confidence. But no institution can take for granted the respect of the community. The community has high expectations on every institution and demands a proof of its utility. The judiciary today is on verge of collapse. It is working under a great amount of pressures – external as well as internal. Internal threats sometime assume alarming proportions more particularly when members of the court present a public show by running down each other. The foregoing discussion makes it amply clear that right from the most ancient times India had a fairly well developed system of administration of justice. The Constitution of India which came into force on January 26, 1950 has established a single hierarchical judicial system for the whole country. The observations of Dr. Ambedkar clearly suggest that the idea of subjecting judicial appointments to the executive or legislative scrutiny was outrightly rejected by the Constituent Assembly. A new thinking, new values, new projections and a positivistic outlook with a determined action are essential to build up a solid foundation of our ailing judiciary.

An independent and impartial judiciary, and a speedy and efficient system are the very essence of civilization. However, our judiciary, by its very nature, has become ponderous, excruciatingly slow and inefficient. Imposition of an alien system, with archaic and dilatory procedures, proved to be extremely damaging to our governance and society. As Nani Palkhiwala observed once, the progress of a civil suit in our courts of law is the closest thing to eternity we can experience! Our laws and their interpretation and
adjudication led to enormous misery for the litigants and forced people to look for extra-legal alternatives. Any one, who is even remotely exposed to the problem of land grabbing in our cities, or a house owner who finds it virtually impossible to evict a tenant after due notice even for self-occupation, can easily understand how the justice system failed.

In the process, a whole new industry of administering rough and ready justice by using strong-arm tactics to achieve the desired goals has been set up by local hoodlums in almost all of our cities and towns, and increasingly in recent years in rural areas. The clout and money these hoodlums acquire makes sure that they are the ones who later enter political parties, and eventually acquire state power. There are countless examples in almost every state in India of slum-lords, faction leaders, and hired hoodlums acquiring political legitimacy. Most of them started their careers attempting to fill the vacuum created by judicial failure through extra-legal, and often brutal methods. In addition, the courts have tended to condone delays and encourage litigation and a spate of appeals even on relatively trivial matters.

The higher courts have taken on themselves too much, making it impossible for them to be able to render justice speedily and efficiently. The writ jurisdiction became pervasive and everything under the sun is somehow made a subject matter of the writ. For instance, the transfer of an employee in a public sector undertaking has become a matter of writ jurisdiction by very involved and dubious logic. Such absurdities undermined the authority of judiciary and caused enormous damage to public interest. To take another instance, the courts have time and again ruled that cooperatives are public institutions, and are creatures of state, whereas in fact cooperative theory and practice throughout the world clearly envisage that a cooperative is a collective private body, created to further the economic interests of the members in accordance with the principles of cooperation. This mind-set that state could intervene everywhere, and that such intervention by definition is
good, ensured that the people's institutions could not flourish in an atmosphere of freedom, self-governance and autonomy. At the same time, state's power even to control its own employees and enforce discipline has been severely eroded. As a net result, the judicial process only helped to accelerate the decline in governance:

4. Right to life and liberty, the most vital freedoms guaranteed in the Constitution, could not be adequately safeguarded. Judiciary is over-burdened and rendered ineffective with unnecessary litigation, delayed procedures, obsessive concern with the livelihood of advocates at the cost of justice to litigant public and indiscriminate application of writ jurisdiction. Excessive case load meant that most orders emanating from courts would be by nature of granting stays instead of adjudication. The age-old village institutions for justice were allowed to wither away completely. Local people, who know all the facts, have neither the means nor access to go through complicated, incomprehensible court procedures. Touts flourished and justice suffered. As a result, most citizens avoid courts except in the most extreme circumstances, when they have absolutely no other recourse available.

Essentially, the failure of the civil and criminal justice system is manifesting in abnormal delays in litigation and huge pendency in courts. While accurate statistics are not available, it is estimated that approximately 38 million cases are pending in various law courts all over the country. While 20 million cases are pending in district courts, High Courts and Supreme Court, about 18 million cases are said to be pending in lower courts. At the end of 1995 it was estimated that around 58 lakh criminal cases were pending trial, while 17.3 lakh cases have been disposed of during the year accounting for 23 percent. In 1994 for example, disposal of cases in our courts was around 17 percent. The conviction rate is abnormally low with only 6 percent cases resulting in conviction. Even in cases extremely grave offences with direct impact on public order and national security, there are
abnormal delays. For instance, it took our criminal justice system more than seven years to convict the murderers of Rajiv Gandhi in Sriperumpudur in 1991. There are harrowing tales of innocent citizens accused of petty offences languishing in jails as under-trial prisoners for decades. Most often, the time spent in prison during trial exceeds the maximum punishment permissible under law even if the person is proved guilty!

There are many judgments given in recent times, which have no legal bearing but largely constitute the views and opinions of the individual judges. Perhaps, this is the reason as to why a number of judgments are reversed and re reversed in the higher courts. For the same reason, judgments have become unpredictable, making one to think that not only one needs to know the law but also to know the perspective of the individual judges, to anticipate with reasonable accuracy as to what sort of judgment would be coming.

With such expectations, it is vitally necessary that the quality of judiciary in the country should be substantially improved. Obviously, this means that the selection process and promotion process for the judges should be made more transparent, stringent and based on well established parameters.

Today, unfortunately, an impression is gaining ground that the judges are appointed by the politicians in power in the government, in a somewhat arbitrary manner and somewhat based on narrow regional and even caste considerations. While one would not know the extent of truth in such suspicions, the very fact that such suspicions exist at least in some quarter make the situation disturbing. The Government of India should examine the feasibility of creating an all India Service for judicial officers in the same manner as that of IAS and IPS officers, so that there would not be any arbitrary method of selecting and appointing judges.

While the judges now command considerable prestige and respect in society, one cannot deny the fact that several of the judges have been caught
in corruption charges in recent times. Many vague allegations have been made against several of the judges, which could create a bad image in the course of time, which should be avoided, particularly in view of the vital role expected of the judiciary. A system for inflicting severe punishment without loss of time on the erring judges should be thought of at every level including in the apex courts. Judges cannot be allowed to have a feeling that they can get away from law, since they sit on judgements on the issues relating to law.

The quality of the judges has to be maintained and protected at the highest level and they should be made to observe several restraints, which are called upon because of the nature of the duties that they discharge. In the earlier days, judges used to avoid situations, where they could be even unwittingly seen in the undesirable company. This is no more so, as judges readily take part in several public functions and social events, where they could come in contact with even criminals and politicians and bureaucrats facing corruption charges. Reiterating the view taken in Motiram and ors vs State of M.P.\(^1\), the Supreme Court in Hussainara Khatoon and ors vs Home Secretary State of Bihar\(^2\), expressed anguish at the travesty of justice on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that the procedure established by law for depriving a person of life or personal liberty (Article 21) also should be reasonable, fair and just.

In Prem Shankar Shukla vs Delhi Administration\(^3\), the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty.

\(^1\) AIR 1978 SCC 194
\(^2\) AIR 1979 SCC 113
\(^3\) AIR 1980 SCC 335
(Article 21). It is observed that to bind a man hand and foot fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to manacle a man is more than to mortify him, it is to dehumanise him, and therefore to violate his personhood.

In Nilabati Behera Alias Lalita Behera vs State of Orissa\(^4\), the Supreme Court asserted the jurisdiction of the judiciary as the protector of civil liberties under the obligation to repair the damage caused by officers of the State to fundamental rights of the citizens, holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the duty of care which could not be denied to anyone.\(^5\) In Delhi Domestic Working Womens vs Union of India & Ors.\(^6\), the Court asserted that speedy trial is one of the essential requisites of law and that expeditious investigations and trial only could give meaning to the guarantee of equal protection of law under Article 21 of the Constitution.

In D.K. Basu vs State of West Bengal\(^7\), the Court found custodial torture a naked violation of human dignity and ruled that law does not permit the use of third degree methods or torture on an accused person since actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair. In Vishaka & ors. vs State of Rajasthan & ors.\(^8\), our Supreme Court said, that, gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. In the absence of

\(^4\) AIR 1993 SCC 999
\(^5\) Article 9(5) of the International Covenant on Civil and Political Rights, 1966
\(^6\) AIR 1996 SCC 14
\(^7\) AIR 1996 SCC 1546
\(^8\) 1997 INDLAW SC 2304
domestic law in the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.

Further, the Indian judiciary has made significant contributions through various pronouncements to check any loopholes and any possibilities of abuse of the power by the election candidates. The criminalisation of politics has been one smouldering issue since it has an immediate bearing on the choice of the candidates in an election and goes to the root of expectation of good governance through elected representatives. Treating the right to vote as akin to freedom of speech and expression under Article 19 (1) (a) of the Constitution and enforcing the right to get information as a natural right flowing from the concept of democracy, in the case of Union of India vs Association for Democratic Reforms and Anr.\(^9\), the judiciary brought about a major electoral reform by holding that a proper disclosure of the antecedents by candidates in election in a democratic society might influence, intelligently, the decisions made by the voters while voting. Observing that casting of a vote by a misinformed and non-informed voter, or a voter having a one sided information only, is bound to affect the democracy seriously, the court gave various directions making it obligatory on the part of candidates at the election to furnish information about their personal profile, background, qualifications and antecedents.

\(^9\) 2002 INDLAW SC 308
Indian democratic system presents a peculiar paradox of the fusion of parliamentary and federal features of the governmental functioning. The founding fathers sought to inherit the unique semblance of the Westminster model despite the peculiarities of the indigenous political set up. However, they also attempted to imbibe the dynamism of the American presidential system owing to its distinct characteristics and viability for a vast democratic multiethnic society. This symbiosis between the parliamentary and presidential system has its decisive bearing on the relationship between and among the three important pillars of governmental trinity, namely, legislature, executive and judiciary.

The founding fathers created an integrated judicial system in India where judiciary was asked to act both as a constitutional watchdog and an institutional harbinger of social transformation. Judiciary got its constitutional strength in terms of its special power of judicial review to check and contain the excesses of other two wings of the government. It also managed to establish its constitutional ascendancy in terms of possessing its sole discretionary right in progressive interpretations of law. As a result one can witness the changing role of judiciary in Indian polity since independence.

In fact, the perceptible change in the role of Indian judiciary over the years has also created great political ripples in the entire system of governance and the concept of social justice. One can broadly identify these specific changes that are associated to judiciary from the 1980s onwards. The decade of the eighties also presents a paradox in terms of the debate between the growing trends of activism and assertion of the judiciary.

The concept of public interest litigation took a clearer shape through the remarkable judgment in what is popularly known as the case of the judges' transfer. In this case, Justice Bhagwati said that the traditional rule was of ancient vintage and arose during an era when private law dominated the scene. Justice Bhagwati observed that there is an urgent need to innovate
new methods and devise new strategies for the purpose of providing access to justice to the large masses of people who are denied their human rights and to whom freedom and liberty have no meaning. The courts have a duty to utilise the initiative and zeal of public-minded persons and organisations by allowing them to move the court and act for general or group interest.

Justice Bhagwati further developed the idea of social justice through courts in another case in which he observed, "The time has now come when the courts must become the court for the poor and struggling masses of this country. They must shed their character as upholder of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. It is through public interest litigation that problems of poor are now coming to the forefront and the entire theatre of the law is changing. It holds out great possibilities for the future."

The Supreme Court initiated this case by converting a letter written by the People's Union for Democratic Rights. The letter, addressed to one of Supreme Court judges, was based upon a report made by a team of three social scientists who were commissioned by the People's Union for Democratic Rights for the purpose of investigating and inquiring into the condition under which workmen were employed in the construction work of various projects connected with the Asian Games. In this case, the Supreme Court came down heavily against critics of public interest litigation.

Realising the fact that in spite of all constitutional provisions and other enactments, socio-economic justice remained a distant dream for the poor and down-trodden, Justice Bhagwati invites judges to use their power to further the cause of social justice. In his work 'Social Action Litigation: The Indian Express' Justice Bhagwati observed:

Independent and professional judges are the foundation of a fair, impartial, and constitutionally guaranteed system of courts of law known as
the judiciary. This independence does not imply judges can make decisions based on personal preferences but rather that they are free to make lawful decisions — even if those decisions contradict the government or powerful parties involved in a case. In democracies, independence from political pressures of elected officials and legislatures guarantees the impartiality of judges. Judicial rulings should be impartial, based on the facts of a case, individual merits and legal arguments, and relevant laws, without any restrictions or improper influence by interested parties. These principles ensure equal legal protection for all.

The power of judges to review public laws and declare them in violation of the nation's constitution serves as a fundamental check on potential government abuse of power — even if the government is elected by a popular majority. This power, however, requires that the courts be seen as independent and able to rest their decisions upon the law, not political considerations. Whether elected or appointed, judges must have job security or tenure, guaranteed by law, in order that they can make decisions without concern for pressure or attack by those in positions of authority. A civil society recognizes the importance of professional judges by providing them with adequate training and remuneration. Trust in the court system's impartiality — in its being seen as the "non-political" branch of government — is a principal source of its strength and legitimacy.

A nation's courts, however, are no more immune from public commentary, scrutiny, and criticism than other institutions. Freedom of speech belongs to all: judges and their critics alike. To ensure their impartiality, judicial ethics require judges to step aside (or "recuse" themselves) from deciding cases in which they have a conflict of interest. Judges in a democracy cannot be removed for minor complaints, or in response to political criticism. Instead, they can be removed only for serious crimes or infractions through the lengthy and difficult procedure of impeachment.
(bringing charges) and trial – either in the legislature or before a separate court panel.

An independent judiciary assures people that court decisions will be based on the nation’s laws and constitution, not on shifting political power or the pressures of a temporary majority. Endowed with this independence, the judicial system in a democracy serves as a safeguard of the people’s rights and freedoms. It has been nearly six decades that we inherited a well-entrenched system of judicial administration besides elaborate and codified, substantive and procedural laws from Britishers. These laws had generally stood the test of time. Therefore, we adopted them with suitable corrections wherever required. Over the years, we have fine tuned the judicial administration so as to meet the needs of changing times and aspirations of the modern India.

The Directive Principles have been used as fundamental principles of governance tempered by the Fundamental Rights. From time to time, adjustments have been made in the Fundamental Rights -- through legislative measures, executive action or judicial pronouncements -- so as to further the object sought to be achieved by the Directive Principles. After all, the purpose of the Fundamental Rights on the one hand and the Directive Principles on the other is common; viz., to provide for an environment that can ensure dignified growth & development of each individual as a useful human being. In order to guarantee that the role of law would inure to, and for, everyone and the promises made by the Constitution would not remain merely on paper, the Constitution makers made provisions for independence of the judiciary.

Liberty and Equality have well survived and thrived in India due to the pro-active role played by the Indian judiciary. The rule of law, one of the most significant characteristics of good governance prevails because India has an independent judiciary that has been sustained, amongst others, because of support and assistance from an independent bar which has been fearless in
advocating the cause of the underprivileged, the cause of deprived, the cause of such sections of society as are ignorant or unable to secure their rights owing to various handicaps, an enlightened public opinion and vibrant media that keeps all the agencies of the State on their respective toes.

One of the most important principles of just democratic governance is the presence of constitutional limits on the extent of government power. Such limits include periodic elections, guarantees of civil rights, and an independent judiciary, which allows citizens to seek protection of their rights and redress against government actions. These limit help make branches of government accountable to each other and to the people. An independent judiciary is important for preserving the rule of law and is, therefore, most important facet of good governance. The judicial system has an important role to play ultimately in ensuring better public governance. There may be a plethora of regulations, rules and procedures but when disputes arise, they have to be settled in a court of law. There is no area where the judgments of Supreme Court have not played a significant contribution in the governance – good governance – whether it be – environment, human rights, gender justice, education, minorities, police reforms, elections and limits on constituent powers of Parliament to amend the Constitution. This is only illustrative. Indian Judiciary has been pro-active and has scrupulously and overzealously guarded the rights fundamental for human existence.

The Law Commission of India headed by its Chairman Justice D.A. Desai, a retired Judge of the Supreme Court, has in its 121st Report, recommended for the establishment of a National Judicial Service Commission, to select judges to the Supreme Court and High Court. According to it, the Judicial Service Commission would consist of the Chief Justice of India as its Chairman, three senior most judges of the Supreme Court, the immediate predecessor of the Commission Chairman, three Chief Justices of the High Court according to their seniority, the Union Minister for
Law and Justice, the Attorney General of India and outstanding law academics. The Commission will send its recommendations to the President of India which will have a binding effect.\textsuperscript{84} It is submitted that the recommendations made by the Law Commission are a welcome move and should find a favourable response from the Government. Of course, some minor changes in the Constitution would be necessary to give effect to these recommendations. The suggestions if implemented will bring about a healthy change in the outlook of the each High Court and would eliminate all parochial or regional considerations which play a major role in the appointment of judges. The discussion reveals that the task of judging the judges is difficult one. It casts a tremendous responsibility on those who are entrusted with this duty. We have seen that each of the aforesaid mechanisms play an important role in exercising some control over judges but one of these mechanisms is a complete answer to the problem of judging the judges.

It has been seen that in actual practice the Government pays a decisive role in the selection and appointment of judges including their transfers. Thus, we may sum up by saying that each of the mechanisms has a distinct role to play but none of these is self-sufficient. Hence, there is an urgent need to devise ways and means to develop some more effective mechanism to judge the judges. Professor Balram suggests for an ombudsman to judge the judges.

After making a detailed study of the concept of independence of Judiciary under the Indian Constitution the summary of the work, the findings of the researcher and his suggestions to improve the system may be described as follows:-

The Constitution of India is second to none in adopting the concept of independence of judiciary in the system of Government which it has established at the three levels of the Union Government, the State
Government and the local Government. The Constitution contains separate provisions in regard to the Union Judiciary, State Judiciary and the Subordinate Judiciary. The concept of 'independence of judiciary' is relevant to the organizational matters as well as the functional matters. In the matters of appointments the independence of judiciary is sought to be secured by reducing the element of politics and by curtailing the discretionary of the Executive branch of Government. The participation of the Judges in matters of the all appointments is the first step-taken by the framers of the Constitution in regard to the system of judicial independence. The independence is sought to be secured by the method of requiring the Judges to perform their functions and exercise their powers without fear and favour. The Judges appointed to the Benches of the Supreme Court and the High Courts are required to take an oath of office, one of the terms prescribed in the Constitution is that of performing their duties without fear or favour. Another method of securing the independence of judiciary is that of securing the tenure of office. No Judge can be removed from service except by a special procedure laid down in the Constitution, which is called the impeachment. The Judges at the Union or the State level do not hold office during the pleasure of the President or the Governor as is the case with the Officers of the Government, i.e., the Executive branch of Government. A constitutionally protected tenure of office is there for the Judges of the Supreme Court and the High Courts. The salaries and allowances of the Judges are not to be altered during their term of office. The Constitution contains a Schedule in that are prescribed the salaries of the Judges. Except during Emergency the salaries of the Judges cannot be reduced by the Government. Another method of securing the independence of judiciary is by enacting a prohibition in the Constitution that the conduct of Judges shall not be discussed in the Legislature. Apart from the constitutional provisions referred to certain statutory provisions also whereby independence of judiciary is sought to be protected. The Conditions
of Service Act, the Removal of Judges Act, the Judicial Officers Protection Act, etc. are examples of how the legal system of our country gives premium to the concept of judiciary independence and keeps the Judges free from any kind of vexatious or malicious action against them for performing their judicial functions. While in the case of Judges of the Higher Judiciary and the Judges of the State Judiciary there are quite a good number of provisions in the Constitution itself, there are very few provisions of the kind with regard to the Subordinate Judiciary. The Constitution does not treat all judicial Officers right from the lower Courts to the apex Courts in the same manner but treats the Judges of the Supreme Court and the High Court as belonging to a particular class, and leaving the Judges of the other Courts to be governed by statutory provisions only.

Further, the Constitution does not provide the same amount of protection to all the Judges of the Supreme Court and the High Courts. What is to be noted is that the Additional Judges do not have the same security of tenure as the puisne Judges have. In the famous case of S.P. Gupta v. Union of India the myth of judicial independence was exploded when the Government sought the opinion of the Governments of several States by a Circular letter to know as to whether they should be appointed as the puisne Judges. The concept of judicial independence was eroded in another action taken by the Union of India through the President by ordering the transfer of Judges in the post-Emergency period. The concept of transfer works like a Damocle's sword on the head of the Judges, and they cannot exercise their powers and functions without fear and favour. If they get a feeling that any order passed against them would result in their transfer from the home State to any other remote State the Judges would abstain from acting freely, and would keep in view all the time the fear of Government and might refuse to give any decision or order against the Government. The concept of Independence of Judiciary received yet another set-back when the
Government superseded the senior Judges of the Supreme Court in regard to the appointment of Chief Justice of the Court and picked up a junior Judge to be the Chief Justice in place of the retiring Chief Justice. The super session of Judges had evoked public criticism and the image of the Government had fallen considerably. The Judges, who Jiad been superseded preferred to relinquish the post of Judges, rather than continue to work as Judges suffering the humiliation of super session. One of the Judges superseded namely, Justice Khan had taken the step of contesting election to the office of President to vindicate the Rule of Law. The Judges of the High Court also suffered in their prestige and dignity in matters of Service Conditions. According to the Statute enacted by the Union Parliament as the Supreme Court and the High Court Judges Act, the Judges are treated at par with members of the All India Civil Service; there is no separate set of service conditions. One of the controversies which had arisen in Andhra Pradesh about the Service Conditions of the High Court Judges was the controversy pertaining to medical reimbursement. The Chief Justice of the High Court wanted to undergo a bypass surgery in United States and for this purpose he approached the Government, which forwarded the request of the Chief Justice to the Central Government. The Central Government withheld its decision for a very long time on account of which the Chief Justice had to carry on his duties with the heart trouble causing him hardships. Ultimately, the Chief Justice had to file a Writ Petition in the High Court seeking a Mandamus against the Central Government and State Government. This was an example of how the Government can deal with the service matters of the Judges, and that the Judges have to keep always in mind the grace of the Government. The deficiencies noticed in the organizational and functional matters of the Judiciary can be overcome by amending suitably the provisions of the Constitution and by having a Chapter with regard to all such matters which pertain to the career of the Judges at the Union and the State levels.
5.2 SUGGESTIONS

The Indian constitution has made elaborate provisions for the establishment of an independent, authoritative and impartial judiciary. India has a single hierarchical judicial system for the whole of the country. The Executive and the legislature, the other two wings of the Government, have developed their own attitudes, preferences, likings or disliking of the system which has ultimately led to the process of re-judicialisation. All these facts point to the gravity of the situation. To remedy this unpleasant situation and to save the system from further erosion of its credibility, the following suggestions deserve immediate consideration:

(i) The Supreme Court and the High Courts are not ordinary institutions. The Constitution has assigned them a special role. It becomes of paramount importance that only persons of highest qualities of learning, training and character are considered for appointment to these courts. All efforts should, therefore, be made to search out the best judicial talent as judges of these courts.

(ii) Now there is no machinery to evaluate the merit of those who qualify for appointment to the Supreme Court and High Courts. The Chief Justices of India, the Bar Council of India and the Chief Justice of different High Courts should jointly deliberate upon this matter and request the Government to establish an independent constitutional machinery to evaluate the merit of those who qualify for appointment to these courts.

(iii) The appointment of chief Justice of the Supreme Court sometimes becomes controversial. Generally speaking, the Government has been following the convention of appointing the senior-most judge of the
Court as the Chief Justice. On a few occasions when departure was made from this principle, there was a hue and cry which landed us in controversies. It is accordingly suggested that the principle of seniority should generally be adhered to and if at all a departure from this principle is to be made, the decision in this regard should be left to the body which might be created for the purpose. In other words, the Government should have the least say in such matters because that would bring in politics in judicial appointments which must be kept out of the judiciary.

(v) Transfer of High Court Judges is another problem in the context of independence of judiciary. Even vesting the power of transfer in the Chief Justice of India is no solution to the problem. No man is too wise to be trusted. The subject of judicial transfer is a complex one. It is suggested that in the ordinary circumstances, a judge should continue in the High Court in which he is appointed except where he is appointed as the Chief Justice in some other High Court.

(vii) There is a wide disparity between the retirement age of judges of the Supreme Court, High Courts and the subordinate Courts. No cogent reasons are given for it. Hence, this should be done away with. The retirement age of High Court Judges should be on par with the Supreme Court Judges.

(viii) Judges in India are low paid. The salaries of the Supreme Court and High Court judges were fixed in 1950 when the Constitution of India came into force. Hence they may be enhanced. The liberalized pension should be fixed.

(ix) Reforms in the education of the judiciary are very much essential. Though the Indian judiciary has maintained high judicial standards, there is no formal training for judges on appointment and no
compulsory refresher courses thereafter. There is also no provision for holding seminars or discussions on recent trends and issues.

The judiciary in India has enjoyed immense public respect, but no institution can take for granted the reverence of the community. The people demand from every institution the proof of its utility. The present study reveals that the judiciary is neither the repressor alive nor reflection of the entire society.

Thus the judiciary is required to act at a time when the nation is witnessing a rapid social change caused by scientific and technological revolution. Hence, law and courts must be avowedly instrumental in performing its role at a much faster speed than now. The researcher has endeavoured to identify some of the fundamental issues ailing our judicial system and emphasised the need for scholars, legal or otherwise, to make in-depth studies to the various issues raised and give a serious thought to devise ways and means to rectify the noted shortcomings of the judicial system.