C7. II SUGGESTIONS:

After going through the entire thesis paper so far covered, the following points have been emerged as suggestions:

1) Transparency in governance should be the most cherished goal in which all the organs like legislative, judiciary and executive work interlinked with each other. It is not only transparency is needed for judiciary but transparency is essential for the other two organs also so that greater transparency will automatically strive to better accountability.

2) The infinite fact remains that many judges have a curious sense of independence and accountability. These two important values always go together. The quality of justicing has to change and a social philosophy which involves streamlining procedures and cutting down on the number of appeals need to be enforced.

3) Administrative Tribunals are more accessible to litigants both in terms of lower costs and the absence of complex procedures. It was desirable to contribute with the Administrative Tribunals despite the powers of the High Courts to scrutinize their decisions. If their decisions were not questioned before the High Courts, it would definitely prevent accumulation of service disputes before the Supreme Court also.

4) No dubious doctrine to be invented to bribe the Bench into immunized corruption. Courts should be clean, run on the basis of a straight, transparent and accountable code of conduct with the support of a performance commission with punitive or concerned powers. If even one corrupt judge pollutes the glory of the great tribe, expel him otherwise through incremental trade unionism which is anthema to justice as a value, justices as a profession and
justicing as a process will ruin the noblest brethren. That will collapse our culture and ethos and the rule of law.

5) The executive power to appoint the judges is wrested from the cabinet and exercised by the collegiums. This is a novel conquest, unique in any democracy. The selection of judges is an expert job, but judges being senior or junior are untrained and without any investigative tools and unfit for his non-judicial technical operation. Never appoint a judge who is without socialist-secular and democratic burning convictions and who is not free from class bias and also from caste bias.

6) We need judges who are trained for the job, whose conduct can be freely criticized and is subject to investigation by a judicial performance commission, judges who welcome rather than shun publicity for their activities.

7) Regretably with a few exceptions, the fraternity of the higher judiciary in India tends to stick together as brother judges, when any one speaks of any wrong doing among any one of them even though they themselves are convinced of that wrong doing. This is clearly what can be described as a spirit of trade unionism that prevails in the higher judiciary not following of any written paper but of their spirit prevails in the higher judiciary. Judicial corruption in higher level must be tackled.

8) There is a way. The measures have to be institutionalized without damaging the general credibility of the judiciary as a body. An office called, "Office of Judicial Ombudsman" may be opened. The holder of this Office would be the recipient of all complaints against the judges. The idea of Judicial Ombudsman as a suggestion may be worked out to root out corruption amongst the judges.
9) The procedure for working out the judicial Ombudsman would be the following: The judicial Ombudsman would make a report in writing, even taking up matters on his own, to the sitting Chief Justice of India with regard to the particular judge either of the High Court or of the Supreme Court against whom the complaint is made after making due enquiries and upon receipt of that report, if would be better on the Chief Justice of India to see that no work was assigned to that particular judge until all the present dilatory process of the current law of impeachment are gone through.

Once people know that legitimate complaints are being entertained in confidence, they will be made to the authority concerned in confidence. Once the people see that something is done, we will no longer have to see scandalous allegations being made openly in the press about individual judges.

10) If the judges interpretation of the Supreme law does not give effect to their legitimate aspirations and hopes, the people are likely to regard the judiciary and judicial independence as being of little relevance to their struggle for democracy and rule of law. It is of paramount importance that their conduct in and out of court reaffirms the people's faith in the independence and impartiality of the judiciary. It is not enough for a judge to be independent, he/she must do every thing possible within the power to ensure that he/she is perceived by the society.

11) Although in discharge of their duties, judges have no employer and therefore are answerable to no one except to their consciences and law. It is the role of the sincere and committed judges to take appropriate steps to identify judges of low moral character and geared at enabling the relevant authorities to weed out such judicial officers from the judiciary.
12) Incompetence, corruption, timidity, arbitrariness and laziness are serious threats to the independence of the judiciary. The judges at their regular conference or meetings should openly and loudly exchange views as to how vices within the judiciary should be eliminated and also press for elimination.

13) The Bangalore principles of Judicial conduct emphasise the importance of public awareness. A judge should recognize that not every one is familiar with the concept of institutional and operational independence of judiciary and their impact on judicial responsibilities.

Judges have an important role for enhancing public awareness of judicial independence. Public confidence and esteem for courts can not be established and maintained through the people’s ignorance over how the judiciary operates. Members of the public should be given the opportunity to reasonably understand the judiciary and judicial independence.

14) Public education with respect to judiciary and judicial independence thus becomes an important function both by the Government and its institutions and of the judiciary itself for misunderstanding can undermine public confidence in the judiciary.

The public may not get a completely balanced view of the principles of judicial independence from the “media” which may portrait it incorrectly as protecting judges from review of and public debate concerning their actions. A judge should therefore, view of public’s own interest take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence.
15) This public education would also enable members of the public to acquire a correct understanding of the difficult nature of judge’s function and therefore be placed in a better position to render assistance in exerting pressure on relevant state authorities to take necessary measures aimed at ensuring that judge’s remuneration should correspond with the dignity of their office and enhance the scope of their duties to the society.

16) The appointment of outside judges as Chief Justices of High Courts has failed so this practice must cease because by following it two infirmities crop up. One, that the new Chief Justices mostly hold office for a short period in the new High Courts and are not able to make any imprint on their colleagues or functioning of the court or among the members of the Bar. This practice also leads to heartburn because some are appointed Chief Justices of the bigger state Courts and some are appointed as Chief Justice of the smaller State Courts on no explainable term except as a rule of thumb, arbitrarily, hardly befitting judicial objectivity. Two, the policy of non-consensual transfer of judges from one High Court to another, would weaken the bulwark of our constitution namely the independence of judiciary, hence if necessary, the transfer case should be selective rather through a general policy.

17) Appointment of judges should be a matter above polities. Some judicial experts and Law makers favoured constitution of a National Judicial Commission for appointments of higher judiciary rather than going with the collegiums system. The Executive should not have the last word. There has been a decline in politics and we are bound to fall to temptations. Some jurists believed that revelation of certain changes between the judiciary and the executive during the appointment procedure could prevent the
selection of undeserving candidates for promotion to higher judiciary.

18) An alternative procedure to remove an errant judge can better be done by the President in consultation with the National Judicial Commission who were responsible for selection. This may take some time but the cumbersome impeachment procedure can be avoided for which an amendment in the constitution has to be passed in both the Houses of Parliament.

19) Judicial accountability is a phrase, sounds incongrous and can convey conflicting messages. This phrase has assumed importance in the wake of improper, irregular and incorrect manner of functioning of judicial officers even among the judges, The best examples are Ghazibad Provident scam and Justice Dinakaran’s episode involving around 500 acres of land grabbing.

The Chief Justice of India can exercise his moral authority to ensure that erraring judges fall in place and behave themselves properly is a misnomer and misconception. The mere moral authority of Chief Justice of India is of no value or significant. More drastic action is needed for errant judges like the impeachment procedure. When the impeachment procedure becomes a failure for implementation, the moral authority to force such a judge to resign may be considered. The moral authority of the Head of the Judiciary i.e. the Chief Justice of India should be given a binding force by ensuring legal sanction to be passed in both the Houses of Parliament for making the necessary amendment in the constitution.

20) A perusal of the pending figures indicates that while there are more civil cases filed in the developed areas, the reliance on the civil justice system is shocking low in Bihar, Jharkhand, Chattisgarh,
Jammu and Kashmir as well as in north eastern states. This disturbing trend could have two explanations- one, that the number of courts is grossly inadequate and secondly, ordinary citizens are consciously not bringing their civil disputes before the judicial system. If the second of these explanations hold good, then it indeed calls for targeted interventions. Such type of suggestion may be rendered fruitful.

21) There has been a substantial improvement in the service conditions for High Courts but we still need to dwell on how to attract qualified and sincere persons to a career in higher judiciary one suggestion may be to follow a strategy of selecting more persons from the subordinate judiciary to District Courts and from the district courts to the High Courts.

22) Another suggestion is the creation of All India Judicial Service. This would entail formation of an All India Cadre for Officers appointed in the rank of additional district judges. The recruitment would be through a national-level examination. It is suggested that 25% of the officers in each state could be drawn from the All India Service.

Persons belonging to one state may face language problem when they are posted in another State. This can be addressed by factoring in the candidate’s language skills while deciding on the location of their assignment. The main objective is to ensure a degree of uniformity in the examination process and also in the selection procedure.

23) A comparison of judicial statistics from different states showed that the litigation rates in various states do not bear a consistent correlation with their respective population. This means that in some states, a large proportion has been approaching the courts as
compared to other states. What is specially worrying is the immense disparity between the number of civil and criminal cases instituted in the backward and insurgency hit areas of the community.

Now time has come to tackle this problem systematically, comparatively and relentlessly.

Another problem with the Government litigation has appeared as a complete lack of management on the part of respective department. A clear litigation policy must be set up for the categories of cases in which appeals can not and should not be filed. If there is a clear policy then it can be safely implemented and nobody can be blamed later for filing further proceedings.

24) For the challenges in the reduction of arrears in the courts, a scheme should be developed and implemented in High Courts for the benefit of millions of poor people in India who can not approach the highest court to get final justice.

25) Since collegiums system is vehemently criticized by various quarters which is given supremacy in appointment and transfer of higher judiciary, adopted in 1993 and in 1998 judgements, enlarging the Collegiums Bench, it is better to abolish the Collegium system by a still larger bench of Supreme Court of India. Alternatively it can be done by a resolution adopted in both Houses of Parliament and follow the provision made in the constitution strictly, obediently and honestly and also avoid appointing dishonest persons as judges after proper screening.