



# CONCEPTUAL FRAMEWORK OF JUDICIAL INDEPENDENCE & GOOD GOVERNANCE WITH REFERENCE TO JUDICIAL APPOINTMENT

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## ABSTRACT

Independence of the judiciary is essential condition for success of Indian democracy. Judicial independence in fact is one of the central components of our democracy. The importance of independence of judiciary is recognized in India since the key factor to maintain rule of law and back constitutional mandate. All developed and under developed countries has realized and accepted the importance of independence of the judiciary. Judicial independence is generally used to mean independence of judiciary as institution and individual judges. thus, the term 'judicial independence' includes institutionalized independence as well as independence of individual judges. Independence of judiciary must consist of honest, experienced and high-quality judges. The judges have been assigned the task to interpret laws and constitutional provision to further the objective to establish egalitarian society.

The present research paper has aim to discuss about the judicial independence which cannot be achieved unless there is transparent and fair procedure to appoint judges. In fact, there would be no hesitation to saying that appointment of judges is a mean to achieve the goal of judicial independence. it can be said that 'good governance' requires the existence of rule of law, independence of judiciary, presence of transparency equality, accountability etc.

**Keywords:** Judiciary, Appointment, Independence, Judges, Procedure.

## 1. INTRODUCTION

India was a part of the British Empire until it gained independence in 1947. After independence of India, regular courts were set up in India though the seeds of current Indian legal system had been sown during British rule over India. Indian judicial system therefore has its root in English legal system. The hierarchy of courts, the system of appointment of judges and removal of judges all are very much similar with English legal system. But it does not mean that prior to the British period; India had no judicial system to impart justice. It had its own judicial system. In Hindu period and Muslim period one can see the impartial judicial system to

impart justice under the control of the King and Sultans respectively who were used to dispense justice with the help of educated persons and judicial officers. It can be said that judiciary and its independence have always been important in India. At present, there are several provisions in Constitution of India and other laws wherein judiciary has been given prime importance due to several reasons. Therefore, in order to comprehend, understand and appreciate the present Indian legal system adequately, it is necessary, here to acquire background knowledge of the courts, procedure of appointment of judges and how they were imparting justice in ancient times.

## 1.2 APPOINTMENT AS MEAN AND INDEPENDENCE AS AN END

Judicial independence and fair and transparent appointment of judges are interlinked with each other. One cannot be expected without the other. Judicial independence is significant in the process of judicial appointment. The fair and transparent process of selection of judges is a mean to achieve judicial independence therefore it can be said that fair and transparent system to appoint judges is a mean to ensure judicial independence. If the system or procedure to appoint judges would be opaque it is not expected that judges would impart justice fairly. Because of the importance of transparent procedure of appointment of judges several countries of the world have emphasized on appointment of judges and laws and constitutions of different jurisdictions are replete with provisions how to appoint judges to higher judiciary.

## 1.3 CONCEPT OF JUDICIAL INDEPENDENCE

Independence is most crucial concept to define. In common phraseology, 'Independence' means not depending on any authority or not depending on another for validity or on another person for one's opinion. According to dictionary meaning the word 'independence' means free from outside control; not subject to another's authority.<sup>1</sup> With regard to independence of judiciary, the word 'independence' would mean that the judge is free to impart justice. The word independence means freedom or liberty. Independence means a status or relationship to others-particularly to the executive branch of government-that rests on objective conditions or guarantees. In other words, the expression 'independence of the judiciary' encompasses freedom not only from its sister authorities like legislature and executive but also from the judicial hierarchy. Judicial independence refers to freedom from improper pressure in the decision-making process from any quarter.<sup>2</sup>

According to Dictionary meaning the word '*judicial independence*' embodies the concept that a judge decides cases fairly, impartially, and according to the facts and law, not according to impulse, prejudice, or fear, the dictates of the legislature or executive, or the latest opinion poll.<sup>3</sup> Judges are not subject to pressure and influence, and are free to make impartial decisions based solely on fact and law. The independence of judiciary

<sup>1</sup> Oxford Dictionary (Oxford University Press 3<sup>rd</sup> edn., 2010); Bryan A. Garner's Black's Law Dictionary (10th edn., 2014).

<sup>2</sup> Sandra E. Oxner, "Judicial Education for Judicial Reforms," 1 *Journal of National Judicial Academy Bhopal* 213(2005).

<sup>3</sup> Available at: <http://www.duhaime.org/LegalDictionary/LawJournal.aspx>. (Visited on November 9, 2016).

is an integral part of democracy, intending to shield the judicial process from external influences and to provide full legal protection to all individuals going to courts for whatever reason.<sup>4</sup>

## 1.4 TYPES OF JUDICIAL INDEPENDENCE

There are two types of judicial independence i.e., the independence of judiciary as an institution and independence of judges. Both differ from each other and hence an integral part of democracy. Herein below has been discussed both categories of judicial independence.

### 1.4.1 Institutional Independence

Institutional independence means that the judiciary, as an institution, must be protected adequately against the interference of other institutions working in any state. In other words, independence of judiciary as an institution means that it must be free from the executive and legislature's control which are the other two major state's institutions. The executive and legislature should not meddle in judicial functioning. But it does not mean that judiciary is entirely immune from the control of the executive and the legislature. In India all three limbs of the State namely the legislature, the executive and the judiciary acts on the principle of checks and balance. What institutional independence means that in matter of imparting justice and in expounding the law to meet the goal of welfare, it is free? In order to smoothen judicial functioning, the financial and administrative autonomy of judiciary needs to be protected. The Constitution of India clearly demarcates the functions of all limbs of the State and each organ should discharge their functions within those limits. The legislature makes laws or rules, the executive execute them and judiciary interpret them. So, judiciary in matter of interpretation and making of laws and rules, in financial matters, supervisions and disciplinary matters must be independent and the executive and legislature should not interfere in them.

### 1.4.2 Judges' Personal Independence

Independence of an individual judge is required to ensure impartial adjudication of a dispute. Individual independence of judges means that a person as a judge is free to act and discharge his or her judicial functions. He or she cannot be influenced by any extraneous considerations. Without any fear and favour judges are free to impart justice. If a judge is threatened or imparting justice under the influence of their superiors, media, and criminal forces, all these factors may put adverse impact on the decision-making power of a judge. In order to minimize all aforesaid possibilities and factors it is important that a judge must practice a degree of aloofness consistent with the dignity of his office or he shall not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination. Therefore, a judge as individual must be personally and internally independent to dispense justice. The Judge must treat the parties before him equally, providing them with an equal opportunity. Rudolf Von Inhering, the Eminent German Jurist, while enumerating the qualities of a good judges, observed that "he must have the necessary firmness of will and moral courage to maintain the law without being led astray by considerations of any kind, by hast or friendship, sympathy or far".<sup>5</sup>

<sup>4</sup> Poonam Kataria, "Judicial Independence in India: An Overview" 1 *International Journal of Applied Research* 397-400 (2015) available at: [www.allresearchjournal.com](http://www.allresearchjournal.com) (Visited on February 12, 2017).

<sup>5</sup> Quoted from O.P. Motiwal, "*Changing Aspects of Law and Justice in India*" 25 (Chugh Publications 1<sup>st</sup> edn., 1979).

The independence and impartiality of the judges depends upon a number of factors, namely the method of appointment of judge, their tenure, perks and salaries. There are several provisions given in the Indian Constitution which secures personal independence of a judge. They are terms and conditions of service, appointment and transfer of judges, salaries, remuneration which have been made available to judges. These constitutional safeguards ensure that an individual judge may exercise his or her functions without any fear or favor. An individual judge may be free to give decisions and discharge his constitutional duties. Besides, an individual as a judge must be independent from his fellow judges.

## 1.5 IMPORTANCE OF JUDICIAL INDEPENDENCE

In all democratic constitutions, or even those societies which are not necessarily democratic or not governed by any constitution, the need for competent, independent and impartial judiciary as an institution has been recognized and accepted.<sup>6</sup> India is no exception. Judicial independence is of vital importance in Indian democracy where various functions and responsibilities have been assigned to it. In fact, there is a well-built need to strengthen the capacity and independence of the judiciary as an influential institution in India. This is of paramount concern in India where judiciary is constitutionally responsible to dispense justice by interpreting and applying the laws of the land.<sup>7</sup> There are several reasons due to which judicial independence needs to be guarded. The following are some of the major justifications for securing independence of judiciary in India.

### 1.5.1. Defender of Constitution

There are constitutional rights, statutory rights, human rights and natural rights which need to be protected and implemented, such protection and implementation depends on the proper administration of justice which in its turn depends on the existence and availability of an independent judiciary.<sup>8</sup> Under Indian constitution judiciary has been regarded as the custodian of the fundamental rights. In case of violation of fundamental rights, the aggrieved has remedy before impartial and neutral tribunal. Within Constitutional scheme, Indian judiciary performs a watchdog role, exercising power of judicial review over the acts of the legislature and the executive.<sup>9</sup> As an independent judiciary, under the constitutional scheme, the Court has played its role without any fear and favour over the acts of the legislature and the executive. When it appears to it, that any law and action of legislature and executive respectively violates fundamental rights, it not only evolved laws to fill vacuum but also issued several noteworthy directions to governments in public interests. The free, unbiased and impartial judiciary can back constitutionally mandate to secure and provide to all the citizens of India justice-social, economic and political. The preamble of the Indian Constitution imposes upon the governments to provide justice to all which can only be secured through unbiased judiciary. The preambular promises are further reflected in part III and IV of the Constitution of India. The protection and enforcement of fundamental rights as envisaged in part three such as right to equality, right to personal liberty, rights against exploitation, educational and cultural rights have been the responsibilities of the judiciary. The judiciary

<sup>6</sup> R.C. Lahoti, *Canons of Judicial Ethics* 13(Universal Law Publishing Co.1<sup>st</sup> edn., 2005).

<sup>7</sup> Livingston Armytage, "Judges as Learners: Reflections on Principle and Practice"1 *Journal of National Judicial Academy Bhopal* 120(2005).

<sup>8</sup> Justice R. Lahoti, *Supra* Note 6 at 139.

<sup>9</sup> Justice R. Lahoti, "Quest for Judicial Excellence" 1 *Journal of the National Judicial Academy Bhopal* (2005).

therefore is bound to uphold the constitutional values and principles of democracy. The role and significance of impartial judiciary becomes more prominent because we are now living in age of human rights wherein all citizens irrespective of their race, religion, caste, sex and place of birth are entitled for some inalienable rights. It is needless to mention here that judiciary exhibited great skill of in broadening the horizon of article 21 right to life and personal liberty and brought several human rights within its ambit in order to make them enforceable. One cannot think so in absence of bold, fearless, impartial and dispassionate judiciary. The rights such as right to move freely within territory of India, right to get uninterrupted education, right to health, right to live in pollution free environment and many other have been treated as integral part of right to life and personal liberty.

Besides, judiciary has revealed great dynamism by making directive principles of state policy as enforceable by bringing them within purview of part III of Indian Constitution.<sup>10</sup> The socio-economic rights as spelt out in part IV would have been meaningless for a million of people in India in absence of independent and impartial judiciary. Part of IV being non- enforceable, has been made enforceable by judiciary. The committed judiciary has made these socio-economic rights as enforceable<sup>11</sup> and brought a ray of hope for the poor and other vulnerable section of Indian society such as women, children, members of Schedule Caste and Schedule Tribe. These categories of persons feel secured and protected in good governance strengthened by judiciary. Thus, judiciary has emerged as defender of the constitution and the principles enshrined therein and guardian of human rights.

### 1.5.1. Interpreter of Laws

Role of judiciary plays an important part in keeping the society as a dynamic one.<sup>12</sup> Laws change as per aspirations of society and judiciary has been assigned the task of interpretation of Indian Constitution and other laws. Interpretation of any laws especially social welfare legislations is highly technical skill which requires appointment of impartial, independent, fearless and broadminded judges.<sup>13</sup> A judge well versed in the law can do the justice and confer beneficial interpretation on social welfare laws. Several constitution provisions and social welfare legislation need to be interpreted to confer maximum benefits of those laws on people for whose benefits those laws had been enacted. The Court afforded liberal interpretation to article 21 of the Constitution and evolved compensatory, human rights, prisoner rights and environmental rights jurisprudence in India. It did not hesitate to implement international treaties and agreements while dealing with domestic issues. Social welfare legislation such as it was well known to the framer of the constitution that in future the ambiguity will arise with the provisions of the constitution so they ensured that the judiciary must be independent and self-competent to interpret the provisions of the constitution in such a way to clear the ambiguity but such an interpretation must be unbiased i.e., free from any pressure from any organ like executive. If the judiciary is not

<sup>10</sup> M.P. Singh, *Constitution of India* 342(Eastern Book Company, 11<sup>th</sup> edn., 2011); J.N Pandey, *The Constitutional Law of India* 30 (Central Law Agency, 50<sup>th</sup> edn., 2013); Narender Kumar, *Constitutional Law of India* 22(Central Law Agency 7<sup>th</sup> edn., 2008).

<sup>11</sup> For details see S.B. Sinha, "Access of Justice and Judicial Reforms," 1 *Journal of National Law Judicial Academy* 50(2005).

<sup>12</sup> Sabita Bandyopadhyay, "Reforms in Judiciary-A Loud Thinking," *Journal of All India Reporter* 23 (2000).

<sup>13</sup> G.P. Singh, *Principles of Statutory Interpretation* 3-35 (LexisNexis Butterworths Wadhwa, Nagpur 12<sup>th</sup>edn., Reprint 2011); T. Bhattacharyya, *The Interpretation of Statutes* 1-3 (Central Law Agency, 8<sup>th</sup> edn., 2012); S.D. Srivastava, *Interpretation of Statutes and Legislations* 1-9 (Central Law Publications, 5<sup>th</sup> edn., 2009); William N. Eskridge, JR., *Dynamic Statutory Interpretations* 1-9 (Universal Law Publishing Company, 2<sup>nd</sup> Indian Reprint 2009); D.N. Mathur, "Interpretation of Statutes 22-39 (Central Law Publications, 4<sup>th</sup> edn., 2014).

independent, the other organ may be pressurizing the judiciary to interpret the provision of the constitution according to them. Judiciary is given the job to interpret the constitution according to the constitutional philosophy and the constitutional norms. Domestic Violence Act, 2005, Right to Information Act, 2005, Dowry Prohibition Act, 1961, The Environmental Legislations, Consumer Protection Act, 1986 and Labour Welfare related laws all can be interpreted in unbiased manner by independent judiciary. Judicial independence is essential for the creative interpretation of the laws. It is worthy to mention here that the interest of haves and have-nots can be seen of competing with each other therefore under such circumstances, balance has to be maintained to do social justice. The impartial tribunal and judiciary can achieve goal of socio-economic justice philosophy as embedded in Indian constitution.

### 1.5.2. Resolver of Disputes

In addition to above mentioned functions, independent and impartial judiciary is required to adjudicate disputes between parties. Indeed, judicial independence is significant in ensuring impartial decision making. Even in the Constituent Assembly, judicial independence was seen as a necessary requirement for the judiciary to adjudicate impartially, insulated from political interferences.<sup>14</sup> The judicial independence also becomes significant because in most of the cases before courts, the governments' have been the parties. Only uninfluenced judiciary can decide against government without fear and favour. If judges would not be appointed fairly and independently there would be chance of favouritism especially in case where judges exclusively will be appointed by government.

### 1.5.3. Assuring Good Governance

In recent years all governments including India talk about ensuring good governance. The Courts are means of assuring good governance in India. The functioning of the executive and the legislature must be open to public scrutiny. The public authorities holding information of public importance cannot conceal the information and when any citizen need information, it become statutory obligation of government functionaries to supply the information sought for. The goals of good governance such as transparency, accountability, responsibility and equitable growth can be achieved via impartial judiciary. Like executive and legislature, the judiciary itself needs to be transparent in matter of appointment of judges and declaration of their assets and income. Judiciary itself needs to be governed under RTI Act, 2005 to achieve good governance in India. In order to understand good governance in judiciary, it is desirable here to discuss the meaning of the word 'good governance' and its major features which will remain a distant dream without impartial judiciary.

The idea of 'Good governance' has received considerable attention worldwide. In order to understand clearly the concept of 'good governance', one has to identify the meanings of the word 'good' and 'governance' separately. The word 'Good' derives from the word God and carries an innate sense of judgment. The word 'good' carries several characteristics within its fold such as what is right, what is wrong, what is just and unjust, what is fair and unfair and what is moral and immoral. Therefore, when the judgment or deed is just, right or

<sup>14</sup> Quoted by Arghya Sengupta, Judicial Independence and the Appointment of Judges to the Higher Judiciary in India: A Conceptual Enquiry" *Indian Journal of Constitutional Law* 116(2012) available at: nalsarijcl.in.(Visited on February 12, 2017)

moral it is good. In the context of ‘good governance’ therefore the word ‘good’ means that governance should be ‘good’<sup>15</sup> and the governments must exercise authority in public interest.

Similarly, the word ‘governance’ traditionally refers to forms of political system and the manner in which power is exercised and utilized.<sup>16</sup> The term ‘governance’ denotes how people are ruled and how the affairs of a state are administered and regulated. It refers to a nation’s system of politics and how this function in relation to public administration and law. In other words, there will be no hesitation in saying that governance is the process of decision-making and the process by which decisions are implemented. It focuses on the formal and informal structures that have been set in place to arrive at and implement the decisions<sup>17</sup>. Based on the views and definitions given above, it can be said that ‘good governance’ requires the existence of rule of law, independence of judiciary, presence of transparency, openness, rule of law, responsiveness, equality, accountability of public officials and participation of people in decisions making. With reference to the well-known features of good governance, the judicial functioning has been assessed under the following subheads.

### 1.5.3.1. Transparency

Transparency in the matter of judicial appointments is crucial factor for upholding credibility and acceptance of judiciary in the eyes of the public. Transparency is ensured by the openness and fairness of procedures adopted in matter of appointments of judges. The word ‘transparency’ has been defined in varied manner. According to the oxford dictionary transparency means “allowing you to see through it” or “allowing you to see the truth easily”.<sup>18</sup> It also means that an adequate amount of information is provided and that it is provided in easily even-handed forms and medium. United Nations Public Administration Network defines transparency as citizen access to information and facilitating citizen understanding of government decision making processes.<sup>19</sup> The transparency thus would mean that everything done by the governments and their officials shall be open for public’s scrutiny. Also, the process of appointment of judges must be transparent.<sup>20</sup> The public must know how judges are selected and appointed or transferred and whether any and if so what, principles and norms govern this process. So it is governments’ responsibility to disclose of true facts. Right to information is significant to achieve transparency in functioning of all organs of the state viz. legislatures, executive and judiciary. We should not forget that transparency is built on the free flow of information, the information which must be directly accessible to those concerned. Thus, under transparency openness and free availability of information and accessibility of the same to the stakeholders are extremely important and seems to be the key features of good governance.

<sup>15</sup> C.P. Barthwal, “*Good Governance in India*” 1 (Deep and Deep Pub. Pvt. Ltd. 1<sup>st</sup> edn., 2003); Munshi, Surendra and Biju Paul Abraham, “*Good Governance in Comparative Perspective and Democratic Societies and Globalization*” (New Delhi, Sage Publications, 2004).

<sup>16</sup> Milk Moore, “Declining to Learn from the East” 24 *IDS Bulletin* 39 (1993).

<sup>17</sup> Ishan Krishna Saikia, “Good Governance and Human Rights: International and National Perspective” 2 *International Journal of Advancements in Research and Technology* 124-34 (2013) available at: [www.ijoart.org](http://www.ijoart.org) (Visited on February 12, 2017).

<sup>18</sup> Oxford Advanced Learners’ Dictionary 1622(7<sup>th</sup> edn., 2005).

<sup>19</sup> Quoted by Frank Bannister, “The Trouble with Transparency: A Critical View of Openness in e- Government, available at: <http://ipp.oii.ox.ac.uk> (Visited on July 13, 2016).

<sup>20</sup> Research Paper on “Good Governance in International Law: An Indian Perspective” *ILA Regional Conference*, South Africa (2007).

### 1.5.3.2. **Accountability**

Accountability is another very important characteristic of good governance. Term accountability has been various connotations and defined differently by people in different contexts. In general parlance, ‘accountability’ can be defined as justifying the actions taken by public officials. According to oxford dictionary,<sup>21</sup> ‘accountable’ means ‘responsible for one’s actions and expected to explain them’. Also, according to Chambers 21<sup>st</sup> Century Dictionary the word ‘accountable’ means to give a reason or explanation for it or to make or give a reckoning of (money spent) etc.<sup>22</sup> According to World Bank, ‘accountability’ is one of the cornerstones of good governance as accountability ensures actions and decisions taken to meet their states objectives and respond to the needs of the community and nation.

On the basis of dictionary meanings and definitions as given above, it can be said that ‘accountability’ means furnishing of reasons and justifications for decisions taken. The authorities have to justify the actions assailed on the touchstone of justness, fairness and reasonableness. In a democratic system of governance like ours, it would mean that what actions and decisions governments are taking, they have to explain them to individuals’ when asked for. In other words, the governments and organizations discharging public functions or associated with public are accountable for decisions or actions taken for the benefit of the public at large.<sup>23</sup> Under such situation the individuals have a right to know what the government and its public bodies are doing<sup>24</sup> and it is only by way of right to information that people can hold public bodies and governments accountable. The public bodies and several entities functioning within our welfare state connected in or the other way with public are accountable to give reasons and justifications for decisions taken.<sup>25</sup>

### 1.5.3.3. **Rule of Law**

The term ‘Rule of Law’ is derived from the French phrase ‘*la principe de legalite*’ (the principle of legality) which refers to a government based on principles of law and not of men.<sup>26</sup> In this sense the concept of ‘*la principe de legalite*’ was opposed to arbitrary powers. Dicey’s concept of the Rule of Law contemplated the absence of wide powers in the hands of government officials. According to him, wherever there is discretion there is room for arbitrariness. According to Dicey rule of law implies, absence of special privileges for a government official or any person, all the persons irrespective of status must be subjected to the ordinary courts of the land and everyone should be governed by the law passed by the ordinary legislative organs of the state.

In Indian Constitution, every citizen is entitled to equal protection under the law and equality before law. No individual can be deprived of his life except as per the procedure established under law. In

<sup>21</sup> Oxford Dictionary and Thesaurus 8(2<sup>nd</sup> edn., 2007).

<sup>22</sup> Chambers 21<sup>st</sup> Century Dictionary (4<sup>th</sup> edn., 2004).

<sup>23</sup> Geeta Sakhuja, “Challenges in Good Governance: Political Instability, Judicial Accountability, Corruption, Unemployment 2 *Imperial Journal of Interdisciplinary Research* (2016).

<sup>24</sup> Triranjan Raj and Sanjeev Kumar Sharma, “Right to Information Act 2005: A Critique with Governance and Administrative Reforms Perspective LV *Indian Journal of Public Administration* 484 (2009).

<sup>25</sup> K.C. Tiwari, The Challenges of Good Governance India in the Era of 21<sup>st</sup> Century” 1 *National Defence Academy, Pune* 116 (2010).

<sup>26</sup> I.P. Massey, *Administrative Law* 21 (Eastern Book Company, 4<sup>th</sup> edn., 1999).



*Keshvanandbharti vs. State of Kerala*<sup>27</sup>, Apex court declared that “rule of law” and “democracy” is the basic structure of Indian Constitution which cannot be changed through Constitutional amendment under Article 368 of the Indian Constitution. Hence it is established that court has legal and final authority to test the legality of administrative action. If any executive action failed to meet standard of legality will be declared as *ultra-vires* or illegal and invalid before law. Recently we have seen increase phenomena of “judicial activism”. Thousands of public interest litigations (PILs) have been filed in high court and Supreme Court, against the casual approach of executive. Only impartial judiciary can maintain rule of law in India where every individual can equally enjoy protection of all laws and not subject to discrimination on basis of sex, creed, religion and caste and birth place etc.

#### 1.5.3.4. Responsibility

Responsibility is significant feature of good governance. It means that all public functionaries shall discharge their functions with utmost responsibility and they are accountable for the acts done towards the public. Any person can seek information from public authorities regarding discharge of their functions and responsibilities. In Indian democracy, all limbs of the State and their officers are accountable to discharge their responsibilities. The judges are also responsible to act and dispense justice in impartial manner. The income and wealth earned by them for example are subject to public scrutiny. The judges should disclose their assets when the same is demanded. It will make them responsible and the system and administration of justice would become transparent. After all it should not be forgotten that democracy signifies a government of, by and for the people. The neutral and impartial judiciary which itself is accountable can alone protect the fundamental rights of the citizens. Judiciary is responsible to keep checks on arbitrary exercise of powers by the executive and the legislature. Similarly, judges are responsible to act as per constitution. They are accountable to the people of India.

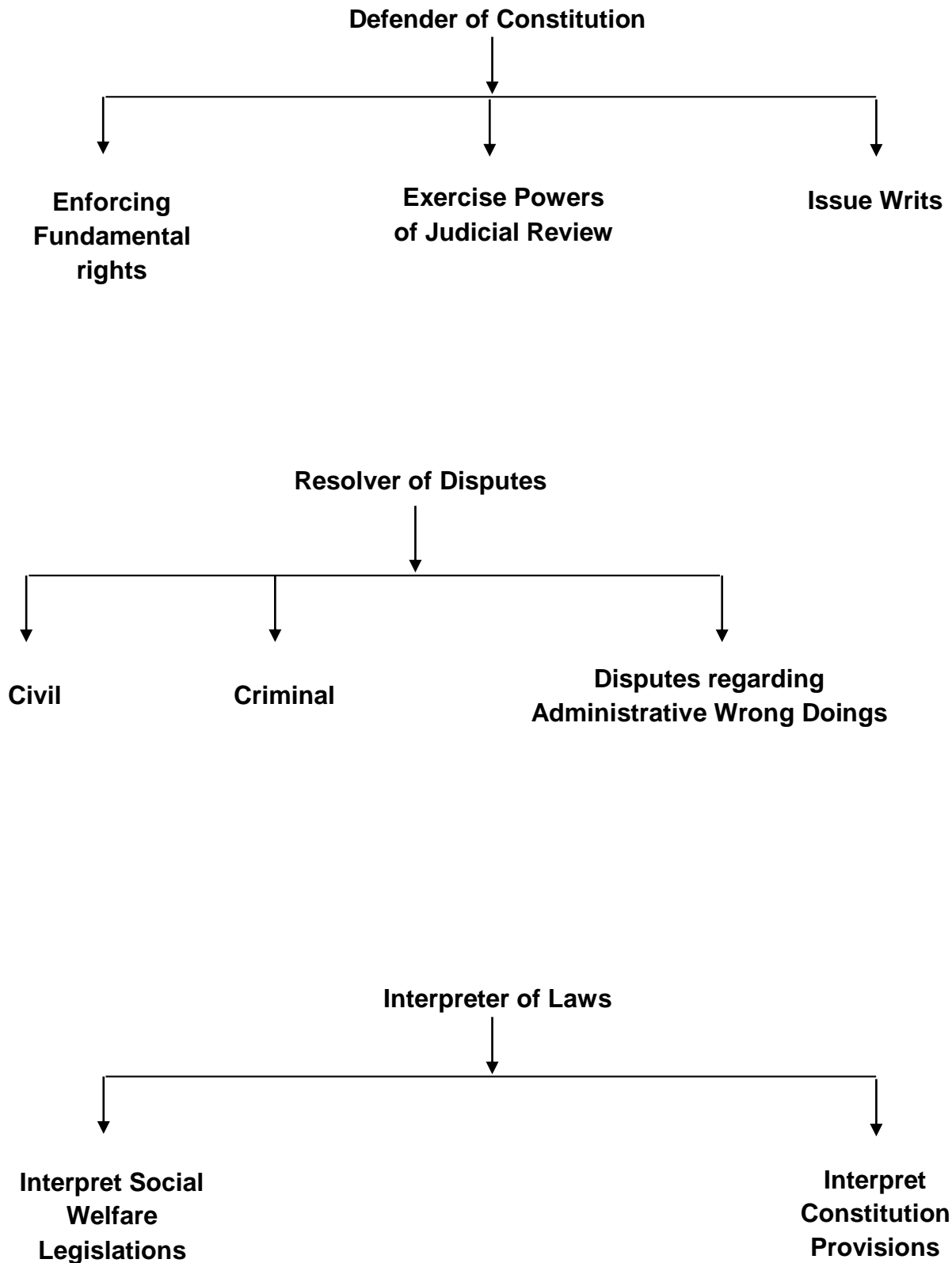
#### 1.5.3.4. Openness

Openness means measures taken to make governance affairs as transparent and participatory to the surrounding community as possible. Openness is required to strengthen the general trust in public institutions. It means that nothing shall be concealed from the public. The public authorities of government are accountable to work in transparent manner especially when there is vast money flow or finance is involved to execute different pro-citizens programmes. The procedure of appointing judges must be transparent. Similarly, the functions of the government need to be open. Openness and involvement of the public is a necessity for the establishment and maintenance of a dynamic and democratic society which builds on consensus and economic growth and for an efficient public sector. Therefore, judicial independence can play decisive role to achieve the goal of good governance which further hinges on several features as discussed above. The judiciary itself should ensure good governance in its own working. The **Graph 2.1 and Graph 2.2** given below depicts the importance and requirement of judicial independence.

<sup>27</sup> AIR 1973 SC 1461.

**Graph-2.1**

**Need and Importance of Judicial Independence**



**Graph-2.2****Judicial Independence to ensure Good Governance****SUM UP**

This brief survey of history of independence of the judiciary reveals that the concept of judicial independence emerges from the doctrine of separation of powers. The independence of judiciary as institution and independence of judges as individual are required to impart justice. The fair and transparent appointment of judges is a mean to achieve the goal of judicial independence. After independence, regular courts were set up in India and idea of judicial independence was recognized in Indian Constitution. The Constitution provides several safeguards to ensure judicial appointments and independence of judges. The efforts have been made to keep judiciary separate from the executive. An institutional mechanism has been inserted in the Constitution wherein powers of all limbs of the government have been balanced against each other. On one hand, the executive attempts to control the judiciary through different mechanisms which include the appointment, removal and tenure of judges while contrary to this, the judiciary has powers of judicial review. Thus, a sort of institutional equilibrium has been placed and imbedded in Indian Constitution. It becomes responsibility of each organ to act as per constitutional scheme.