

Constitution of India

Preamble to Indian Constitution

Union Parliament: Salient Features:

- Indian Parliament has got bi-cameral structure. It consists of House of the People (Lok Sabha) and the Council of States (Rajya Sabha).
- The Lok Sabha is directly elected and more powerful
- and popular house whereas the Rajya Sabha is indirectly elected and less powerful than Lok Sabha.
- The Lok Sabha is more powerful than Rajya Sabha since it has absolute control over the finance of the state and the Council of Ministers.

The preamble states the following:

We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular and democratic republic and to secure to all its citizens;

- Justice - social, economic and political.
- Liberty of thought, expression, belief, faith and worship.

- Equality of status and opportunity; and to promote among them all;
- Fraternity, assuring the dignity of the individual and the unity and integrity of the nation;

In our Constituent Assembly, this twenty sixth day of November 1949, do hereby adopt, enact and give to ourselves this Constitution.

The preamble states India as a sovereign state:

- India as a sovereign state denotes the end of British rule over India.
- It affirms India as both internally and externally free.
- The preamble categorically accepts the principle of popular sovereignty.
- Some critics point out India's membership of Commonwealth of Nations limits the sovereign status of India.

- However some critics point out that India's membership of the Commonwealth is a voluntary act and a courtesy arrangement and hence it does not restrict India's sovereignty.

The Preamble proclaims India to be a socialist state:

- In 1976, the 42nd Amendment Act included the term socialism.

- The term socialism suggests that India is committed to secure equitable distribution of wealth, income and resources among its people.

- The above is to be gained by peaceful, constitutional and democratic means.

The preamble declares India to be a secular state.

- The 42nd Amendment Act incorporated the term secular in the Constitution of India
- India gives no special status to any religion. There is no such thing as a state religion of India.

- India adopts secularism guaranteeing equal freedom to all religions. It stands for the right of freedom of all citizens.

The Preamble declares India to be a Democratic State.

- According to the democratic structure of India the authority of the government rests upon the sovereignty of the people.

- People enjoy equal political rights.

- People enjoy freedom of speech and expression, freedom of press, freedom to assemble peacefully and right to information.

- India has got the system of Parliamentary Democracy in the manner of British Government.

The Preamble declares India to be a Republic.

- India is not ruled by a monarch or a nominated head of state.

- India has an elected head of state who wields power for a fixed term.

The preamble lists four cardinal objectives which are to be secured for all its citizens

- Indian Constitution seeks to secure justice – social, economic and political for all the citizens.
- The Preamble declares liberty to be the second cardinal objective to be secured for the citizens
- Liberty of thought, expression, belief, faith and worship.

- Realizing fully importance of equality and the inter-relationship between liberty and equality, the Preamble makes equality the third cardinal objective of the Constitution to be secured for the citizens.
- Equality is described in two terms such as – equality of status and equality of opportunity.
- The Preamble clearly states that promoting fraternity among all the people is another major objective of the Constitution.

- It is specified in the Preamble that free India should promote fraternity assuring dignity of the individual and the unity and integrity of the nation.

Evaluation of the Preamble:

- The Preamble is, in fact, a key to the interpretation of the Constitution. It states the philosophy and the objectives of the Constitution.

- The Preamble states the values which the Constitution is committed to secure.
- The Preamble is a sacred and basic part of the Constitution.
- The 42nd Amendment Act also involved the amendment of the Preamble.

Salient Features of Indian Constitution

- Indian constitution is a written and detailed constitution. It consists of 395 Articles divided into 22 parts with 12 schedules and 102 constitutional amendments till date.
- The framers of the constitution were aware of the socio-economic-political problems to be faced by India in post-independence period, which made them to include various provisions into Indian constitution that turned the constitution into a lengthy one.

- In several respects, the constitution of India is a unique constitution. It is a constitution that shows the blending of both federalism and unitarianism.

- The mixture of federalism and unitarianism was done keeping in view the pluralistic nature of Indian society and presence of regional diversities and the need for securing unity and integrity of the nation.

- Indian constitution is a self-made and enacted constitution.
- Indian constitution is a mixture of rigidity and flexibility. Some of its provisions can be amended in a difficult way while some other provisions can be amended very easily.

■ Indian constitution is a constitution which is drawn from several sources. In adopting Parliamentary system and Bicameralism, it bears the influence of British Constitution. The US Constitution influenced it in regard to its Republicanism, Independence of Judiciary, Judicial Review and Bill of Rights. Socialist Revolution influenced to adopt socialism as a goal of Indian Constitution.

Fundamental Rights and their Nature

- Like the Constitution of USA, France, Japan, Switzerland and several other liberal democratic countries, the Constitution of India contains a detailed Bill of Rights which grants and guarantees fundamental rights and freedoms to the people of India.
- The reason of giving fundamental rights is to provide adequate opportunities for the self-development of the people of free India.

- The Bill of Rights (Part III) of the constitution enumerates the Fundamental Rights of the people of India.
- 24 articles from article no. 12 to 35 in Part III of the constitution present the Fundamental Rights.
- There were seven Fundamental Rights initially but with the deletion of Right to Property by 44th Amendment Act the number of Fundamental Rights came down to six.
- Each of the six Fundamental Rights covers several rights under it.

- Unlike US Constitution which guarantees not only the rights mentioned in it but also the other natural rights of the people, the Constitution of India only gives recognition to the rights mentioned in its Part III.
- The Constitution of India does not mention social and economic rights in Part III of it. It only grants civil and political rights and freedoms. Social and economic rights like Right to Work, Right to Leisure, Right to Social Security are put under Directive Principles of State Policy (Part IV) of the constitution which is a non-enforceable part of the constitution.

- In granting the rights, Indian Constitution makes a distinction between the citizens and the foreigners. The Rights such as equality before law, religious freedom etc. are available to both the citizens and the foreigners. While the rights such as freedom of speech, assembly and organization are only available to the citizens of the country.

- The Constitution of India not only grants but also guarantees the Fundamental Rights. Part III contains a special right such as Right to Constitutional Remedies under article 32 for the protection of Fundamental Rights.

- But Fundamental Rights are not absolute.

- Parliament is empowered to impose reasonable restrictions on Fundamental Rights however that is also subject to judicial review.
- Parliament can amend the Fundamental Rights in accordance with the power and procedures laid down in Article 368 of the constitution. But in doing that it cannot change the basic structure of the constitution.
- The Fundamental Rights guaranteed under article 19 get suspended when emergency is proclaimed.

- During emergency, the right to move any court for the enforcement of rights conferred by Part III of the Constitution may also get suspended.
- However the 44th Amendment Act laid down several safeguards to prevent the possible misuse of the emergency power by the President.
- The President can suspend Article 19 if the proclamation of emergency has only been made on ground of external aggression or war.

- The President cannot also suspend the fundamental right to move the court for the enforcement of fundamental rights in relation to right to life and personal liberty.
- The Fundamental Rights know no frontiers since they are available to the citizens not only when they are in India but also when they are abroad in so far as their government is concerned.
- The Fundamental rights hold a supreme status over any ordinary law and the Directive Principles of State Policy. If any law come into clash with them are considered as void.

Six fundamental rights of an Indian citizen are:

- The Right to Equality (Arts 14 to 18).
- The Right to Freedom (Arts 19 to 22).
- The Right against Exploitation (Art 23 to 24).
- The Right to Freedom of Religion (Arts 25 to 28).
- Cultural and Educational Rights (Arts 29 to 30).
- Right to Constitutional Remedies (Art. 32)

Right to Equality (Arts 14-18):

Right to Equality incorporates five rights under it:

a. Equality before Law :

- Article 14 guarantees equality before law to all the citizens and others. That signifies equal subjection of all to the laws of the country and everybody is entitled to get equal legal protection.
- However equality before law does not mean absolute equality among the unequal but it means equality among the people belonging to same situation or to similar groups

b. Prohibition of Discrimination:

- Article 15 prohibits any sort of discrimination on the grounds of religion, caste, creed, sex or place of birth.
- However protective discrimination in respect of weaker sections of the society is permitted.

c. Equality of Opportunity:

- Article 16 clearly states that there should be no discrimination on any ground in availing employments or offices to the citizens under the state.

- However the Constitution does not debar the Parliament from making any law in order to prescribe some essential qualifications for a class or classes of appointments.

d. Abolition of Untouchability:

Article 17 states for the eradication of untouchability and declares the practice of it in any form as an offence and punishable under the law.

e. Abolition of Titles:

- Art.18 prohibits the state from conferring any title except honours for military or academic distinctions or for meritorious services of the citizens to the state.
- The article also states that no citizen of India or a person who is not a citizen of India while holding any office of profit under the state shall accept any title or any present or office of any kind from or under any foreign state except with the consent of the President.

Right to Freedom:

Articles 19-22 grants the Right to Freedom.

a. Article 19 of the constitution guarantees six(initially seven) fundamental freedoms to the citizens:

- Freedom of speech and expression.
- Freedom of assembly.
- Freedom to form association (including freedom to form and manage cooperative societies).
- Freedom of movement.
- Freedom to reside and settle.
- Freedom of profession, occupation, trade or business.

- The 44th Amendment of the Constitution deleted the freedom of acquiring, holding and disposing of property [Art. 19 (1) (f)] from the list of freedoms.
- The six fundamental freedoms provide a sound foundation for the enjoyment of civil and political liberties.
- The first three freedoms such as of speech and expression, of assembly and to form association are the essential freedoms for the working of democracy.
- The Right to Information is also considered as a part of the freedom of speech and expression.

- In December 2004, the Union Cabinet decided to get enacted Right to Information Act to empower people to get all necessary information from public authorities.

- The freedom of assembly and to form associations are also the essential requirements of a democratic country.

- The freedom of movement and to reside and settle in any part of the country and to carry on any trade, occupation or profession are the essential civil liberties.

- Right to freedom is not absolute. It is subject to reasonable restrictions.

b. Protection against Arbitrary Conviction:

- The article 20 provides protection against arbitrary and excessive punishment, prevents double prosecution and punishment and it warrants against the forcible securing of statements/confessions from an accused.

- According to the 44th amendment of the Constitution that no power can suspend article 20 during emergency.

c. Protection of Life and Liberty

- Article 21 provides protection to the life and liberty of citizens as well as non-citizens. It states that no person shall be deprived of life and liberty except according to the procedures established by law.
- The 44th Amendment of the Constitution has made the right of life and liberty as inviolable during emergence. However the 59th Amendment of the Constitution has laid down that the right can be suspended by the President.
- Right to life cannot be limited to animal existence, it means to live with dignity availing the basic necessities of life.

▪ **Right to life and liberty under article 21 includes several rights:**

1. Right to Live with Human Dignity
2. Right to Livelihood
3. Right to Privacy
4. Right to Pollution Free Environment
5. Right Against Sexual Harassment
6. Right against Solitary Confinement
7. Right to Legal Aid
8. Right to Speedy Trial
9. Right against Handcuffing
10. Right against custodial violence

11. Right against Delayed Execution
12. Right against Bar Fetters (Iron Rod Fetters)
13. Right to Travel Abroad
14. Right to Shelter
15. Right to Health Care and Medical Assistance
16. Right to Know
17. Right to Release and Rehabilitation of Bonded Labour
18. Right against Cruel and Unusual Punishment

- Article 21 also presents the Right to Education of Children. The 86th Constitutional Amendment Act 2002 has made free and compulsory education for children between the age of 6 to 14 years.

d. Protection against Arrest and Detention:

- Article 22 declares that a person who is arrested and detained should be informed of the cause for their arrest and detention and should have the right to be defended by the legal practitioner of their choice.

- A person arrested should be produced before the nearest court of the magistrate within 24 hours excluding the time taken to reach the court from the place of arrest and cannot be detained in the custody more than 24 hours unless it is authorized by the magistrate.
- However the above provisions are not applicable to any person who happens to be an enemy alien and to the person arrested or detained under the law of preventive detention.

- The Constitution authorizes preventive detention which involves arrest, detention and imprisonment without trial and before any crime has actually been committed.
- In that regard the Union Parliament and the State Legislatures are empowered to pass preventive detention acts to enable the executive to arrest, detain and imprison somebody without trial.

- There is a rule that no law can prescribe preventive detention for more than 2 months however the detention period can be extended if any advisory body consisting of the members, eligible to be appointed as judges of the High Court prescribes for that.
- However the Parliament can also by law prescribe some circumstances or cases under which a person can be detained and fix the maximum period for which the detained person can be kept in the custody.

- The provision for preventive detention is there in the Constitution for the sake of national unity and integrity however its misuse by the government cannot be ruled out. Therefore, it has turned out to be a controversial topic.

Right against Exploitation (Articles 23-24):

a. Prohibition of traffic in human beings and forced labour:

- Article 23 makes the trading of men and women and forced bonded labour and exploitation of people making them work without remuneration as offences.

- In order to protect women against immoral purposes, the Suppression of Immoral Traffic in Women and Girls Act (SITA) has been in operation since 1956.

b. Prohibition of Employment of Children:

- Article 24 states that no children below 14 years of age should be employed in factory or mine or in any other hazardous job.

- The above provision is to protect children from exploitation that may adversely affect their health.

Right to Freedom of Religion (Arts, 25-28):

- The article 25 guarantees to all the people, the freedom of conscience and to profess, practise and propagate any religion of their choice or to refrain from adopting any religion.
- The article also declares that there is no state religion in India and all religions are equal. It also states that forcible conversion is an offence.

Art. 26 declares the freedom to manage religious affairs:

The article states that every religious denomination of any section has the right to:

- establish and maintain institutions for religious and charitable purposes.
- manage its own affairs in religious matters.
- Own and acquire movable and immovable property ; and
- administer such property in accordance with law.

c. Freedom from paying taxes for the promotion of any religion (Article 27):

The article states that no person can be compelled to pay taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion and maintenance of any particular religious denomination.

d. Freedom as to attendance in religious function (Article 28):

■ The article prohibits the giving of religious instructions in any educational institution maintained out of state funds or receiving aid from the state.

- However the earlier rule is not applicable to the educational institutes administered by the state but are established under any trust if they think that it is required to give religious instructions to their students.
- No person in any educational institute can be forced to attend any religious function conducted in the institute.
- The State can, however, regulate matters connected with religion for introducing welfare measures and social reforms.

Cultural and Educational Rights (Arts. 29-30):

a. Right to maintain Language, Script and Culture:

- Article 29 declares that any section of the citizens residing in India has the right to conserve their language, script or culture.
- This right is absolute as the Constitution does not say that the state can impose reasonable restrictions upon it.
- The objective of this right is to facilitate the minority to maintain their own language and culture and to debar the majority from imposing their language and culture upon the minorities.

b. Right to establish and administer educational institutes:

- The article 30 declares that all the minorities have the right to establish and administer educational institutes whether based on languages or religions of their own.
- They have the right to admit students into their institutes, to have their own governing bodies and to adopt their own system of instructions.
- The state universities cannot impose a particular medium of instructions on minority institutes.

- Further the state while providing grants-in-aid to educational institutes cannot discriminate against such institutes.
- The minority character of such institutions cannot be destroyed by the state.
- Minority institutions enjoy autonomy of operation.

Right to Property (Art. 31)

(Deleted from the list of Fundamental Rights by the 44th Amendment)

Right to Constitutional Remedies (Art. 32)

- The article 32 provides the effective provisions for the protection and enforcement of Fundamental Rights.
- The High courts (Article 226) and the Supreme Court (Art. 32) are empowered to issue writs or directions for the protection of Fundamental Rights.
- The Writs are:
 - a. **The Habeas Corpus** provides a remedy against wrongful detention. By it the court directs the detaining authority to produce the detained person before the court and justify the cause of detention.

The Mandamus orders an official to do their public duty failing of which may deprive others of their fundamental Rights.

The Prohibition empowers the High Courts and the Supreme Court to prohibit the lower court from proceeding with a case that does not fall within its jurisdiction.

The Certiorari empowers the High Courts and the Supreme Court to order the lower/inferior court to transfer a case (on which already the verdict is given or which is disposed but which does not fall within its jurisdiction) to them for its consideration.

The Quo Warranto (Latin words meaning – What is your authority?) empowers the High Courts and the Supreme Court to restrain a person from acting in a public office to which he is not entitled.

- Any citizen can move the High Courts and the Supreme court for getting their fundamental rights protected through any one of these writs. The Supreme Court and the High Courts can issue these writs for enforcing the fundamental rights.

- The right to Constitutional Remedies is described to be the most significant of all the fundamental rights because without it people would be left with no means to get their rights enforced.

Fundamental Duties (Article 51-A)

This new Part IV-A which consists of only one Article 51 A was added to the Constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of ten fundamental duties for citizens. Article 51-A says that it shall be the duty of every citizen of India-

- a. To abide by Constitution and respect its ideals and institutions, the National Flag and National Anthem.**
- b. To cherish and follow the noble ideals which inspired our national struggle for freedom.**

c. To uphold and protect the sovereignty, unity and integrity of India.

d. To defend the country and render national service when called upon to do so.

e. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending all religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women .

f. To value and preserve the rich heritage of our composite culture.

- g. To protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creature;
- h. To develop the scientific temper, humanism and the spirit of inquiry and reform;
- i. To safeguard public property and to abjure violence.
- j. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements.

The 86th Amendment Act, 2002 has added a new clause (k) to article 51-A which provides “who is parent or guardian to provide opportunities for education to his child or as the case be, ward between the age of six and fourteen years”.

Needs for Fundamental Duties- Rights and duties are correlative. The fundamental duties, are, therefore, intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour.

Directive Principles of State Policy

- Part IV of Indian Constitution presents the Directive Principles of State Policy (DPSP). This part consists of a set of principles giving directives to the state regarding its future policies. The DPSP are the socio-economic rights and freedoms which the state is expected to secure for the people through suitable legislative enactments.
- The objective of DPSP is to provide for a welfare polity characterized by social, economic and political justice. Art. 38 declares: “The state shall strive to promote

the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of national life”.

- DPSP are not enforceable and the people cannot move the court to get them enforced. However, the Constitution calls upon the state to give due importance to them and base their policies on them. Art.37 declares: “The provisions contained in this Part IV shall not be enforceable by any court, but the principles laid down are nevertheless fundamental in the governance of the country and it shall be

the duty of the state to apply these principles in making laws.”

- Part IV is a manifesto of the aims and objectives of the Constitution. It details the objectives contained in the Preamble to the Indian Constitution.

- DPSP ensure a continuity in the direction of socio-economic reforms and welfares in the policies of the government whether the government is run by one party or the other.

- These principles can also be taken as yardsticks to measure the worth of any government.

- Part IV lists several principles from articles 36 to 51 but these are not presented in a systematic manner. However, these principles can be classified as Socialistic Principles, Gandhian Principles, Liberal Principles and General Principles for the sake of convenience.

Socialistic Principles or Socio-Economic Principles:

This category comprises DPSP which seek to secure a welfare socialist state in India. Most of the socialist principles are contained in articles 38, 39, 41, 42 and 43.

- The state shall try to secure the welfare of the people by securing a social order characterized by justice-social, economic and political.
- The state shall provide adequate means of livelihood to all citizens whether men or women.
- Equitable distribution of material sources with a view to ensure common good for the nation. In this regard Zamindari Abolition and Land Reforms Acts were passed in order to remove extreme concentration of land ownership in few hands.
- To operate the economic system in such a way as to prevent the concentration of wealth and means of production in few hands. To gain this objective the state has nationalized some banks, Life Insurance and General Insurance as well as established major industries in Public Sector.

- To provide equal pay for equal work for both men and women. In this regard the state has been active in undertaking programmes for women upliftment and securing an equal place for women along with men. Women now inherit property and get recruited in all services including the defence services. The provision for equal wages for equal work for both men and women has been given a legal foundation.

- To protect the health and the strength of the workers both men and women and to protect the children from entering the avocations unsuitable to their age or health. The state has made the employment of child labour a crime under the Industrial Act.

- To protect children and youth from exploitation and moral and material abandonment.
- To secure right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want.
- To make provisions for just and humane conditions of work and for maternity relief. Over the years several legislative enactments such as the Factories Act 1948, Mines Act 1952, Plantation Act 1951 and Maternity Benefit Act 1961 have been passed to safeguard the interests of the workers.

- To secure to all workers, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural benefits. The evil practices of begging and bonded labour have been abolished by law.
- To secure participation of workers in the management of industries.

Gandhian Principles:

- To organize Village Panchayats and endow them with adequate power. In accordance with this directive, the state has organized a three tier Panchayat Raj system in India. By 73rd Amendment Act, the Panchayat Raj System and by 74th Amendment Act, Municipal Institutions have been revamped to give them fixed tenures, assured elections and more financial and non-financial power.

- To promote cottage Industries on an individual or co-operative basis in rural areas. In accordance with this directive, the state extends help and encouragement to small scale and cottage industries. Several boards have been set up for the promotion of cottage industries such as All India Khadi and Village Industries Board, Small Scale Industries Board, Silk Board, All India Handicraft Board, All India Handloom Board etc.

- To promote the educational interests of the weaker sections and Backward classes

of the society and protect them from social injustices and all forms of exploitation. To implement this directive, the state has undertaken steps to give health and educational facilities as well as financial assistance to such sections of the society. Special commissions for monitoring the welfare of SCs, STs, OBCs, Women and minorities have been set up. The state has enacted several laws for protecting the rights and interests of women and to save them from any form of exploitations. Such laws are like Dowry Prohibition Act (1961), The Suppression of

Immoral Traffic on Women and Girls Act (SITA, 1956), The Criminal Law Amendment Act (1983) which provides punishment of rape with minimum of seven years imprisonment, Indecent Representation of Women (Prohibition) Act (1986) that prohibits the defamation of women in photographs, advertisements and films and in 1987 Commission of Sati (Prevention) Act was passed.

Several states have introduced free education for children belonging to weaker sections of the society as well as taken steps to educate the adults and women. 86th Amendment Act has amended Art.45 to lay down that the state shall endeavor to provide early childhood care and education for all children until they complete six years of age.

- Steps to be taken to raise the standard of living in rural areas. To implement the directive, the state has been implementing various programmes and projects such as the broad framework of Community Development Programme has undertaken several projects to develop rural industries, handicrafts and cottage industries. Integrated Rural Development Programme, National Rural Employment Programme, Self-Employment Programmes etc. have been in operation. Attempts have been made to secure better housing, better sanitation, improved education and better communication in rural areas

- To bring about the prohibition of the consumption of intoxicating drinks and drugs injurious to health. The state has undertaken steps in regard to that through proper education, publicity and mass media. Stringent laws have been passed to prevent the smuggling of narcotics into India.

- To develop agriculture and animal husbandry. The state has established agricultural universities, dairy research centres, cooperative milk plants, agro-industries, fertilizer plants etc to have developments in the field of agriculture and animal husbandry.

Liberal Principles:

- To secure a uniform civil code for Indians.
- To provide free and compulsory education to all children up to the age of fourteen years within ten years.
- To secure the separation of judiciary from the executive.
- To provide free legal aid to the poor so that justice is not denied to any citizen because of poverty. Through the system of Lok Adalats and Public Interest Litigations an attempt is being made to make justice easily available to people.

General Principles:

- To protect and improve the environment and to safeguard the forests and wild life of the country.
- To protect every monument or place or object of artistic or historic interest from being spoilt, disfigurement, destruction, removal, disposal or export.
- To promote international peace and security. Acting under the directives given by Article 51, the government has adopted

Panchsheel (Derived from a Sanskrit word. It means not interfering with others' internal affairs and having mutual respect for each other's territorial unity, sovereignty and integrity.) and Non-Alignment (not formally aligned with or against any major power bloc) as the fundamental features of the Indian Foreign Policy. India has always paid respect to the principles of peace , which is to be gained through peaceful means, development of friendship and cooperation with all states.

- To maintain just and honorable relations between nations.
- To foster respect for international law and treaty obligation.
- To encourage the settlement of international disputes by arbitration.

Evaluation of Directive Principles of State Policy:

Some of the critics criticize DPSP due to the following reasons:

- Repetitive.
- Lacking in clarity.
- Not systematically presented in the constitution.
- Mere declaration because they are neither enforceable by law nor any time limit given for their implementation.

But some critics justify the inclusion of DPSP in the constitution and see their significance due to the following reasons:

- It is true that directive principles are not enforceable by law but they are backed by public opinion

- They provide for a foundation for welfare polity.
- Directive principles form the moral code designed to guide the political behaviour of the party who form and run the government to secure justice to the people.
- The directive principles are a source of continuity in the policies of the changing governments in a democratic state.
- The DPSP are complementary to the Fundamental Rights. The socio-economic rights which the makers of the constitution could not grant to the people due to the paucity of resources try to make them available to them through the future governmental legislations that will implement the DPSP.

It is true that there is ambiguity in DPSP because in case of some of them, specific directions are not given in regard to their achievements. But that ambiguity becomes beneficial because it aids the state to interpret and apply these principles in accordance with the socio-economic environment which prevails at a time.

Union Parliament: Its Salient Features:

- Indian Parliament has got bi-cameral structure. It consists of House of the People (Lok Sabha) and the Council of States (Rajya Sabha).
- The Lok Sabha is directly elected and more powerful and popular house whereas the Rajya Sabha is indirectly elected and less powerful than Lok Sabha.
- All the states do not have equal representations in Rajya Sabha.
- The Lok Sabha is more powerful than Rajya Sabha since it has absolute control over the finance of the state and the Council of Ministers. Lok Sabha's executive power consists in Council of Ministers being collectively responsible to it. The ministers remain in office as long as they enjoy the confidence of majority in the Lok Sabha.

- Union Parliament has got non-sovereign status. It can only legislate over the subjects which are constitutional and those are again subject to the consent of judiciary and the President of India.

- President is not a member of the Parliament but Art. 79 of Indian Constitution considers him to be an integral part of it. He summons and prorogues the meetings of Union Parliament and all bills passed by the parliament become laws after he puts his signatures on them.

- The Vice President of India is not a member of the Rajya Sabha but acts as its chairperson and conducts its proceedings.
- The Speaker and the Deputy Speaker are elected by the members of the Lok Sabha from amongst themselves. The meetings in the Lok Sabha are presided over by the Speaker and in his absence by the Deputy Speaker.

- There is a provision for nominated members in both the houses of the Parliament. According to article 80 of Indian Constitution, President of India nominates twelve members for Rajya Sabha who have excelled in the fields of art, science, literature and social service. The President can also nominate not more than two members from Anglo Indian Community for Lok Sabha if the President thinks that the community is not represented adequately in the house.

- The Union Parliament not only enjoys legislative powers but also Judicial and electoral powers. It can impeach the President, the

Judges of High Courts and of Supreme Court as well as the Council of Ministers is collectively responsible to the Lok Sabha. The President can be removed from office only by a resolution adopted by both the houses with 2/3 majority of their members. Both the houses can jointly pass a resolution for the removal of any judge of any High Court or of Supreme Court. Union Parliament can also jointly pass a special address to the President for the removal of some high officers of the state like the Attorney General, the Chief Election Commissioner and the Comptroller and Auditor General of India. It can also take a disciplinary action against any member or any citizen who is found to be guilty of committing a contempt of the house.

- Union Parliament has also got the electoral powers. Its elected MPs along with the elected members of all the State Legislative Assemblies constitute the Electoral College for the election of the President of India. The members of the two houses elect the Vice-President of India. The members of the Lok Sabha also elect a Speaker and a Deputy Speaker from amongst themselves.

- The meetings of Indian Lok Sabha is presided over by its Speaker and in his absence by the Deputy Speaker.

- Union Parliament has got the power to amend the Constitution. Both the Lok Sabha and Rajya can amend all parts and each article of the Constitution together except those parts which also require along with their approval, a special approval by at least one-half of the State Legislature.
- Each declaration of the emergency has to be approved by the Union Parliament within a stipulated period. In case the Lok Sabha gets dissolved at the time of the declaration of emergency, it has to be got approved by the Rajya Sabha.

Lower House of the Union Parliament:

The Lok Sabha/The House of the People

- The number of the members of the Lok Sabha varied from time to time and by the 31st Amendment Act, the total membership of the Lok Sabha was fixed at 545, out of these 525 were to be elected from the States and 20 from the Union Territories. The present membership of Lok Sabha is 545, out of which 543 members are elected from all the states and Union Territories and two members are nominated from Anglo Indian Community by the President of India. However the maximum strength of the Lok Sabha can be for 552 members out of which two to be nominated and the rest to be directly elected by the people of India.

- The whole country is divided into as many electoral constituencies as is the number of the members of the Lok Sabha to be elected. From each constituency one representative is elected. Presently 131 seats in Lok Sabha are reserved seats- 87 seats for SC candidates and 44 for ST candidates. Hence, there are some reserved constituencies from which only SC and ST candidates can contest election.
- The members of the Lok Sabha are elected through secret ballot but nowadays the voting machines are used in election.
- The Election Commission is in charge of conducting every election for the Union Parliament and all State Legislatures.

Qualification For Membership in Lok Sabha:

- Must be a citizen of India.
- Must not be less than 25 years of age.
- Must not hold any office of profit under the State or Union Government.
- Should not be of unsound mind.
- Should not be a bankrupt.
- Should not be an offender of a grave crime as declared by any court of law.

Powers and Functions of the Lok Sabha:

- **Legislative Power:**

An ordinary bill becomes a law after it is passed by both the houses of the Parliament. An ordinary bill can be introduced in any house of the Parliament but 90% of such bills are introduced in the Lok Sabha. If there is a deadlock over the passage of a bill in Rajya Sabha that is introduced in Lok Sabha and if it persists for six months then the President summons a joint sitting of both the houses which is presided over by the Speaker of the Lok Sabha. In a joint sitting, the Lok Sabha dominates the show because of its larger membership. The decision of the joint sitting is accepted by both the houses.

- Executive Power:

The Council of Ministers is collectively responsible to Lok Sabha for all its acts. The ministers remain in the office as long as they enjoy the confidence of the majority of the members of the Lok Sabha. Lok Sabha can remove the Council of Ministers by passing the vote of non-confidence.

- Financial Power: All the money bills are introduced in the Lok Sabha. If the Rajya Sabha does not approve a money bill passed by Lok Sabha, it can delay it for a maximum period of 14

days and after 14 days becomes over it is deemed to have been passed by both the houses of the Parliament. The speaker of the Lok Sabha gives the decision whether a particular bill is a money bill or not if any controversy arises regarding its nature and his decision is considered to be final that cannot be challenged by any court or any of the houses of the Parliament. Thus, Lok Sabha is the real custodian of the purse of the country

- The Lok Sabha in addition to the above powers has also got Judicial and electoral powers as well the power to amend the Constitution.

The normal term of the Lok Sabha is five years, which can be extended for one year during an emergency but fresh election of the Lok Sabha must be held within six months of the end of emergency. The President can dissolve the Lok Sabha before the expiry of its term. When the elections to the Lok Sabha are held before the completion of the term of the previous Lok Sabha, these are called mid-term elections.

Speaker of the Lok Sabha

- The speaker enjoys a powerful position in the Lok Sabha. He exercises supreme authority on the floor of the house. His status is equal to that of the Chief Justice of India.
- After the general election is over and the Lok Sabha is constituted, the leader of the majority party proposes the name of the speaker after consulting the leaders of the opposition parties. The speaker is elected unanimously.
- The qualifications essential to be the member of the Lok Sabha are also the required qualifications for the post of the Speaker. However an experienced and popular member is always elected for this post.

- The tenure of the speaker is of five years as is of Lok Sabha. However, the Speaker continues to be in his office even after the dissolution of Lok Sabha and retains his post till a new Lok Sabha elects its Speaker. The Speaker may resign from his office at any time before the completion of his term.
- Article 94 of Indian Constitution says that the Speaker ceases to hold his office if he ceases to be the member of the Lok Sabha or resigns from his post. He can also be removed from his office passing a resolution for his dismissal by majority of the members of the Lok Sabha. However, to initiate such an act, a prior notice of 14 days should be given by the movers.

Powers and Functions of the Speaker:

- The Speaker presides over the meetings of the Lok Sabha as well as presides over the joint sitting of both the houses.
- The Speaker maintains discipline in the House. If any member is found to be guilty of unruly behaviour in the house, the Speaker may warn him or ask him to leave the house.
- The Speaker in consultation with the other members and committees of the house and with the Prime Minister fixes the agenda of the meetings of the house.
- Each of the member of the house has to get permission from the Speaker to ask the ministers the questions on various matters.

- The Speaker conducts the business of the house, allows the members to introduce the bills, gives them the time to speak, fixes time for the debates in the house, puts matter to vote, announces the result etc.
- In regard to the dispute on any rule according to which the business of the house is conducted, the Speaker gives his interpretation regarding the rule that happens to be final and cannot be challenged in any court of law.
- In regard to any dispute regarding a bill whether it is money bill or not, Speaker's decision happens to be the final.
- The Speaker does not take part in the debates and discussions in the house and does not also involve in the voting on bills. But if there is a tie over a bill, he can exercise his casting vote.
- The Speaker is the protector of the privileges of the members of the house that they enjoy. If there are disputes in regard to the privileges, he refer them to the committee on privileges and in accordance with the wishes of the committee , he decides the matters.

- The members of the Lok Sabha can approach the President through the Speaker who acts as the link between the President and the Parliament.
- The Speaker plays an important role in the composition of the committees, which conduct the major part of the business of the house. The Speaker is the ex-officio chairman of some of the important committees such as Business Advisory Committee, Committee on Rules etc.
- The Speaker has several administrative responsibilities. He has the final control over the Lok Sabha Secretariat. He appoints the employees of it, determines the service rules for them and supervises their work. He has to upkeep the records of the proceedings of the House.

- The Speaker is neither as deeply politicised as the Speaker of the U.S. House of Representatives nor as thoroughly neutral as the Speaker of the British House of Commons. He exercises his power in an impartial manner neither as the man of the majority in the House nor of the opposition but as the man of the House committed to preserve the dignity of the House. While the Indian Speaker retains his political link and affiliation outside the House, he acts as a neutral chairperson of the Lok Sabha. He refrains from indulging into aggressive party politics even while maintaining his party membership.

Rajya Sabha (The Upper House of the Union Parliament)

- The Rajya Sabha i.e. the council of states is the upper house of the Union Parliament.
- All the states do not have equal representation in Rajya Sabha. They represent according to their size of population.
- The members of the Rajya Sabha are elected by the elected representatives of the state legislative assemblies.
- The Rajya Sabha can have a maximum strength of 250 members out of which 238 members, representing the states are elected by the State Legislative Assemblies and the remaining 12 members are nominated by the President who have achieved distinctions in the fields of art, literature, science and social service.

- The qualifications required to be the member of Rajya Sabha are the same required to be the member of Lok Sabha. To be the member of Rajya Sabha one must be above 30 years of age.
- The Supreme Court of India has declared that to be the member of Rajya Sabha, it is not required for the person to only contest election from one's home state. One can contest the election from any state since there is the concept of single citizenship in our country.
- The tenure of a member of the Rajya Sabha is six years. But one third of its member retire after every two years and elections are held for the vacant seats.

- The Rajya Sabha is not subject to dissolution like Lok Sabha.
- The President convenes the sessions of the Rajya Sabha along with that of Lok Sabha or whenever he feels it necessary. However , there cannot be a gap of more than six months between the two sessions of the Rajya Sabha. The President can call the Rajya Sabha into a special session to get the declaration of emergency approved if the Lok Sabha is dissolved at that time.
- At least one tenth members of the Rajya Sabha must be present for carrying out the proceedings of the house.

- The Vice- President is the chairperson of Rajya Sabha and he presides over its meetings though he is neither a member of it nor he exercises his vote in the house. But in case of a tie over any measure for legislation , Vice-President as chairman can cast his vote.
- In Vice-President's absence, the Deputy Chairman who is elected by the members of the Rajya Sabha from amongst themselves presides over the meetings of the house.
- The Powers of Rajya Sabha – Legislative powers, financial powers, executive powers, judicial, electoral powers, Constitution Amending powers etc.
- The Rajya Sabha also enjoys some special powers such as it has the power to create or abolish An All India service if it is approved by 2/3 of its members, power to approve the declaration of emergency by the President if the Lok Sabha is dissolved at that time.

There is no denying the fact that Rajya Sabha is less powerful than Lok Sabha. Some of the critics even term it to be a superfluous house. Even Dr. B. R. Ambedkar was suspicious regarding its utility. However, Rajya Sabha is designed to give representation to different states of the country.

Union Executive

The structure of the Union Executive is as follows:

The President of India

Vice-President of India

The Prime Minister

And

Union Council of Ministers

The President of India:

- The President of India is the head of the state and the chief executive. He holds the highest office in India.
- He represents the sovereignty of India.

The Constitution lays down the following qualifications for a candidate seeking to be elected for the post of President of India:

- Should be a citizen of India.
- Should complete the age of thirty five years.
- Should be qualified for being elected as a member of the House of the People.

- Should not hold any office of profit.
- Should not be a member of the either House of the Parliament or of a House of State Legislature. If a member of any house of the Parliament or State Legislature gets elected as the President, he/she shall be considered as have vacated their seat in that house on the date on which he joins the office.

Election of the President.

The Constitution provides for an indirect election of the President. He is elected by the electoral College consisting of :

- The elected members of both the Houses of the Parliament.
- The elected members of the Legislative Assemblies of the States.
- The nominated members are denied their share in Presidential election.
- It must be noted that any vacancy or vacancies in the electoral college cannot withhold the Presidential election.

Powers and Functions of the President:

- The President is the head of the state and all the executive powers are vested in his hands.
- The President appoints the Prime Minister and all other ministers on the advice of the Prime Minister.
- He allots the portfolios of the ministers and can also redistribute those.
- He forms the rules for the smooth transaction of the business of the house.
- He gets the administration run by the Council of Ministers.
- In performing all the above functions, the President follows the advice of the Prime Minister.

- The President appoints the leader of the majority party in Parliament as the Prime Minister.
- In case there is no majority party, the President can select a member for the post of Prime Minister who in his opinion can command the majority in the house.
- No bill passed by the Parliament can become a law unless it is signed by the President.
- The President has the power to summon and prorogue the sessions of the Parliament.

- The President can dissolve the Lok Sabha before the completion of its term of five years.
- The President can summon the joint sitting of the two houses of the Parliament over an unresolved deadlock in regard to any bill or issue.
- The President has the power to nominate members for both the houses of the Parliament.
- No money bill can be introduced in the Parliament without the prior consent of the President.

- The President controls the Contingency Fund of India. He has the power to order an expenditure out of it for meeting an unseen expenditure.
- The President ensures the passing of the Annual Financial Statement (Budget), showing an estimate of revenue and expenditure of the Union for the coming financial year, on time.
- The President also appoints a Finance Commission which makes recommendations for the distribution of revenues between the Union and the States.

- The President as the head of the state enjoys power to grant pardon to the offenders. In considering the mercy petitions, the President depends upon his own discretion.
- Further the President can seek any advice from the Supreme Court of India on any legal matter or a bill of public importance. The Supreme Court is bound to give such an advice however the President may not accept it.
- The President acting under the advice of the PM and Union Cabinet exercises emergency power to deal with three kinds of emergencies.

- The emergencies may be:

National emergency caused by external aggression or internal rebellion. **Constitutional emergency** arising out of the breakdown of constitutional machinery in a state or some states and **Financial emergency** arising out of Financial crisis in the country.

- In regard to the emergencies, the President is given the power to take necessary steps to meet them.

- When a constitutional emergency is declared in any state, the state comes under the President's rule. The Governor of that state becomes the real executive head and the state council of ministers get removed. The state legislature either gets dissolved or remains suspended. The Governor runs the administration of the state on behalf of the President and carries out all the directions of Union Government.

- In case of a financial emergency, the President can issue any direction to the states for protecting the financial stability of the country. He can order a cut in the salaries and allowances of the public servants, including the judges of the Supreme Court and the High Courts. He can order that all money bills after their passage by the state legislatures should be submitted to him for his approval.

- The Constitution gives vast powers to the President to deal with these three types of emergencies. The President also exercises his emergency powers in accordance with the advice of the Prime Minister and his Council of Ministers.

- It seems to be that President of India is very powerful but all his powers he exercises on the advice of the Prime Minister and his Council of Ministers.
- The President is the nominal executive head of the state whereas the real executive head is the Prime Minister and that is necessitated by the Parliamentary form of democracy that India has.

Vice- President of India:

- Article 63 of the Constitution provides for the office of the Vice-President.

- The Vice-President is elected by members of both the houses of the Parliament.

- The Qualifications of the Vice President:
Should be a citizen of India.

Should complete the age of thirty five years.

Should be qualified for being elected as a member of the Rajya Sabha.

Should not hold any office of profit.

Should not be a member of the either House of the Parliament or of a House of State Legislature. If a member of any house of the Parliament or State Legislature gets elected as the Vice- President, he/she shall resign their membership before assuming the office.

- Vice-President plays the dual role: as the chairman of the Rajya Sabha and as the Vice-President.
- In fact there is no such function of the Vice-President, he has to step into the role of the President when there is untimely vacancy for that due to the death, removal or resignation of the President.
- The Vice-President remains in the office of the President for a maximum period of six months and after a new President is elected , the Vice-President reoccupies his office.
- In case of a temporary vacancy in the office of the President due to illness or any other reason, the Vice-President works as an acting President till the President's resumption of his office.

- As the Chairman of the Rajya Sabha, the Vice President conducts the business of the house, maintains discipline of the house and can take action against those who violate the rules of the procedure of the house. He conducts the discussions and debates in the house and allows the members to speak in the house with his permission.
- The Vice-President has no voting power in the house but he can cast his vote in case of a tie over an issue.
- The Vice-President is not a member of the Rajya Sabha but he/she acts as its Chairperson.

There is no denying the fact that the Vice-President's role in the government is rather insignificant but his function as the ex-officio Chairperson of the Rajya deserves full recognition and appreciation. His office is needed to fulfill certain unforeseen eventualities.

The Prime Minister

- The Constitution of India provides for a parliamentary form of government and therefore divides the executive into two parts: The Nominal or Constitutional Executive and the Real Executive.
- Prime minister is the Head of the government of India and is the real holder of the executive authority of the Union. Article 74 (1) states: “There shall be a Council of Ministers with the Prime minister as its head”.

- The President appoints the leader of the majority party in Parliament as the Prime Minister.
- In case there is no majority party, the President can select a member for the post of Prime Minister who in his opinion can command the majority in the house.
- The qualifications essential to be the member of the Parliament are also the essential qualifications for the office of the Prime Minister.

- The tenure of the office of the Prime Minister is five years. But if majority of the Lok Sabha pass vote of non-confidence against him, the Prime Minister either submits his resignation to the President or faces dismissal at his hands.
- The constitution nowhere formally describes the powers and functions of the P.M. However, as the head of the government, the key stone of cabinet arch, the maker and leader of the Council of Ministers, the chief advisor to the President, the leader of the majority in Parliament, the leader of the nation and the real source of all key appointments and patronage, the Prime Minister exercises a very large, rather larger amount of power in the Indian political system.

- After the appointment of Prime Minister, he submits the list of persons to the **President** to be appointed as ministers in the Council of Ministers. Prime Minister is free to select ministers as per his choice.
- The Prime Minister is free to determine the strength of his ministry. However, the total membership of the Council of Ministers cannot be more than 15% of the strength of the Lok Sabha.
- The Prime Minister is free to select Ministers according to his choice but he has to see that representations are given to all the States and Union Territories as well as to scheduled castes, scheduled tribes and backward classes and to different communities. The Prime Minister heading a coalition government must give representations to all the partners of the coalition group.
- The Prime Minister takes normally all the ministers from his party but he can also appoint outsiders as ministers. However, Prime Minister can appoint non-MPs as ministers for six months.

- It is an undisputed privilege of the Prime Minister to allocate portfolios to his ministers. He determines that which minister shall be in charge of which department.
- He has the right to review the allocation of portfolios of his ministers from time to time and make changes wherever desirable.
- The Prime minister is the chairman of the Cabinet. All the matters are discussed in the Cabinet with the consent of the Prime Minister. He also decides the agenda of the Cabinet's meetings.
- The ministers have to accept the leadership of the Prime Minister. In any case of disagreement with him, they have to quit.

- The Prime minister is all powerful to demand the resignation from any minister and the latter has to accept the wish of the P.M. If a minister does not resign on asking, the PM can get him dismissed through the President or he himself will resign. After the PM resigns, the council of Ministers gets dissolved. Being the leader of the majority , the PM is again invited to form the ministry and in doing that he will drop that minister.

- The PM is the link between the President and the Cabinet.
- The PM acts as the chief coordinator of the government. He co-ordinates the activities of all the departments to secure co-operation amongst all departments.
- The Prime Minister has the most effective power to ask for dissolution of the Lok Sabha.
- The PM always plays a key role in determining the foreign policy of the country and India's relation with other countries. He may or may not hold the portfolio of foreign affairs but he always influences rather determines India's foreign policy.
- PM is the main spirit behind all economic planning. It was PM Nehru who introduced five years plans and initiated the building of major multi-projects.

- All important appointments at the national level are in fact made by the PM. The appointments include Governors, Attorney- General, Auditor General, Members and Chairman of Public Service Commission etc.
- The emergency power that the constitution vests into the hands of the President are in really the powers exercised by the PM.

The Prime Minister enjoys the most powerful position in the whole political system but he can neither be a dictator nor even behave like a dictator. The office of the PM is a democratic one to which any one can rise but through participation in the democratic process and only displaying sound leadership qualities.

The Union Council of Ministers:

- It works under the headship of PM and works as the real executive. The President of India always acts as advised by the PM and the Union Council of Ministers.

Categories of Ministers:

- Cabinet Ministers: Their number is between 15 and 30. They constitute the cabinet- the powerful policy-making and decision making part of the Council of Ministers. They are the top leaders of the party/parties in power and happen to be close to the Prime Minister.

- Ministers of State and Ministers of State with Independent Charge: They constitute the second category of the ministers. They are not the members of the cabinet. A minister of state either holds an independent charge of a small department or is attached to Cabinet Minister. While the Departments like Home, External Affairs, Defense, Finance, Agriculture have 2 or 3 minister of states, the departments like Civil Aviation, Information and Broadcasting, Labour Welfare, Surface Transport and Textiles are headed by a Minister of State each.

- Deputy Ministers: They are attached to the Cabinet Ministers or Ministers of State for assistance. No Deputy Minister holds an independent charge of any department. The Deputy Ministers' functions are to help the ministers under whom they work. They are mainly given the responsibility to prepare answers to parliamentary questions pertaining to their departments and to aid in getting the Government Bills passed by the Parliament.

- Parliamentary Secretaries: They are neither ministers nor are assigned any administrative work. Their sole function is to assist the ministers in Parliament.

- Office of the Deputy Prime Minister: The Constitution does not provide for the office of the Deputy Prime Minister. But it is the will of the Prime Minister or the compulsion of party politics that determines whether the ministry should have the office of Deputy Prime Minister.

Some Powers and Functions of Council of Ministers:

- The Council of Ministers is the real executive.
- In the exercise of the executive powers, the Cabinet formulates the policies which are to be submitted to the Parliament for approval and gets them approved by the Parliament, runs the administration of the Union according to the policies approved by the Parliament and coordinates the working of different departments of the government.

- The exercise of emergency power by the President is always done in accordance with the advice of the Council of Ministers headed by the Prime Minister.
- The President makes all higher appointments according to the wishes of the Cabinet in fact of the Prime Minister.
- All treaties and other international agreements are negotiated and signed by the ministers on behalf of the President or the Government of India as the case may be.
- To Prepare the Defense of the Country through the organization and modernization of Army, Air Force and Navy and by formulating a suitable defense policy and the nuclear policy is fundamentally the function of the Cabinet.

- If the Lok Sabha passes a bill not supported by Council of Ministers or rejects a bill supported by Council of Ministers, it is taken to be a vote of non-confidence against the ministry and under such circumstances the entire Council of Ministers resigns. In such a case the Prime Minister/Cabinet can advise the President to dissolve Lok Sabha.

- The Budget is prepared by the Cabinet (Finance Minister).

- The Cabinet gets the Budget passed by the Parliament because of the majority that it commands.

- The Cabinet runs the financial administration in accordance with the provisions of the budget as passed by the Parliament.

- Money Bills can be introduced only in Lok Sabha and only by the ministers.
- The Parliament can modify the financial measures but only with the consent of the Cabinet.

Hence, the Union Council of Ministers is the real and powerful executive in the Indian political system. The executive, legislative, financial and emergency powers of the President are actually exercised by the Council of Ministers headed by the Prime Minister. Within the Council of Ministers, the Cabinet happens to be the most powerful part

Indian Judiciary and its Salient Features:

- Under our Constitution there is a single integrated system of Courts for the Union as well as the States, which administer both Union and State laws, and at the head of the system stands the Supreme Court of India. Below the Supreme Court are the High Courts of different States and under each High Court there are 'subordinate courts', i.e., courts subordinate to and under the control of the High Courts.

- At the top of the judicial system is Supreme Court of India followed by High Courts at State level. There are 21 High Courts in the Country. At the District level, there are Subordinate District Courts.

- **Supreme Court of India** The Supreme Court is the apex Court at national level which was established on 28th January 1950, under Article 124(1) of the Constitution of India. In this context, Article 124 (1) reads as “there shall be a Supreme Court of India consisting of the Chief Justice of India and until Parliament, by law, prescribe a large number of not more than 7 judges. “Though by 2009 Amendment, the number of judges in Supreme Court was raised to 31 including the Chief Justice. All proceedings in the Supreme Court are conducted in English. The seat of Supreme Court is in Delhi and the proceedings are open to the public.

•**High Courts:** The highest Court in the State is the High Court constituted under Article 214 of the Constitution which reads there shall be a High Court in each State. There are at present, 21 High Courts in the Country. Each High Court comprises of a Chief Justice and such other judges as the President of India from time to time appoint.

•**Subordinate Courts:** The judicial system comprises of subordinate courts which represent the first- tier of the entire judicial structure. As a general rule, Civil cases are dealt with by one set of Hierarchy of Court known as Civil Court and Criminal cases by another known as Criminal Court. The Power of Civil courts are governed by Civil Procedure Code (CPC) and power of Criminal Court are governed by Criminal Procedure Code(Cr.pc) respectively.

•**Independence of Judiciary:** Parliamentary Democracy works on the principle of 'Division of Power,' and in the making of law there is direct participation of the legislature and the executive. It is only the judiciary that remains independent and strong safeguarding the interests of the citizens by not allowing the other organs to go beyond the constitutional limits. It acts, therefore, as a check on the acts of the other two organs which might violate the Constitutions and powers assigned to them.

•**Judiciary as the Final Interpreter of the Constitution:** Judiciary has the powers of interpreting the Constitution and its mandates, and the say of judiciary has to be followed by all organs and it is final.

•**Supreme Court as the Arbiter between the Union and the States:**

Article 131 gives the Supreme Court the power to settle a dispute if it arises between the Union and a State, or between one State and another, or between a group of States and others.

•**Guardian of Fundamental Rights:** Indian Judiciary acts as the guardian of fundamental rights and freedoms of the people that are enshrined in the constitution. Under Right to Constitutional Remedies, people have the right to seek the protection of the courts to prevent the violation of their rights.

•**The Power to issue writs:** Both the Supreme Court and the High Courts are empowered to issue writs for the protection of Fundamental Rights.

•**Judicial Review:** The Supreme Court has the power to review any judgment pronounced or order made by it. Article 137 provides for review of judgment or orders by the Supreme Court wherein, subject to the provisions of any law made by the Parliament or any rules made under Article 145, the Supreme Court shall have the power to review any judgment pronounced or made by it.

•**Fast Track Courts:** Acting under the recommendation of 11th Finance Commission, in April 2000, the Union Government decided to establish Fast Track Courts in the Country. Initially about 450 such courts were established. By August 2002, nearly 1250 such courts were created and those began holding speedy trials.

•The system of creating fast track courts requires the appointment of ad-hoc judges from among the retired session or additional session judges, members of the Bar, and judicial officers who are promoted on an ad-hoc basis. The tenure of such a judge is two years. Their selections are made by the concerned High Courts.

•The fast track courts are expected to cut down both judicial delays and the huge expenditure incurred in maintaining under-trials in prison across the country. These are designed to provide speedy justice to the people.

•**Special Courts:** Under the Special Courts Act, 1979, the Government of India can by notification in the official gazette establish special courts for trying certain specified/special cases and categories of people. A special court consists of a sitting judge of a High Court or the district courts within the local limits of whose jurisdiction the Special Court is situated. A Special Court is empowered to try only specified cases involving specified crimes.

•**Public Interest Litigation System:** Under this system, the courts of law in India can initiate or enforce action for securing any significant public or general interest which has been adversely affected or likely to be affected by the action of any agency, public or private.

Under it any citizen or a group or a voluntary organization or even a court brings to notice any case demanding action in the interest of the public. It provides for an easier, speedy and less expensive system of providing relief, under orders of the court, to the aggrieved public or any section of public.

Separation of Judiciary from the Executive: The Constitution provides for separation between the judiciary and two other organs of the government- the legislature and the executive. The judiciary is neither a branch of the executive nor in any way subordinate to it. The Judicial administration in India is organized and run in accordance with the rules and orders of the Supreme Court. Judicial administration is independent of the federal and state administration.

Local Self-Government: Rural and Urban

- Local Self-Government which is also called 'Local Government', is a system of direct and active involvement of the people of a local area in the administration of local affairs for the satisfaction of local needs and creation of civic amenities with the help of local resources and through organized local level efforts.
- The democratic ideals of decentralization of power, development and increased, continuous and active popular participation in the process of nation building can only be achieved through the organization and working of an efficient system of Local Self-Government.

- The Constitution of India gives a directive to the state to establish, maintain and make operational a system of local government in both urban and rural areas. Hence, each part of India whether urban or rural, is being locally administered by a local government for the satisfaction of local needs.
- Rural Local Government in India is known by the name Panchayat Raj. It has been in operation since the early years of Independence and it has the responsibility to satisfy the needs and aspirations of the rural people who constitute more than 70% of the whole population.
- It was in 1959 that Panchayat Raj, as modeled on the recommendations of B.R.Mehta Committee was first introduced in Rajasthan.

- The Committee recommended the creation of a three tier Panchayat Raj structure- Panchayat at the village level, Panchayat Samiti at the block level and Zila Parishad at the district level.
- All states of the Union accepted the potential and importance of Panchayat Raj as a mechanism for democratic decentralization and rural development. However, Panchayat Raj failed to produce a qualitative change in Rural India during 1959-1992. Living standards in rural area improved but only partially and that too only in some areas. The following reasons were taken to be accountable for the failure of Panchayat Raj.

- The illiteracy and ignorance of the rural people.
- Excessive governmental interferences and control.
- Economic dependence of the Panchayat Raj institutions upon the government.
- Irregular elections.
- Working of Panchayat Raj Institutions more as governmental agencies and less as popular and public institutions.
- Inexperienced representatives elected by the people who failed to comprehend the programmes and policies of the Panchayat Raj.

- The power struggle resulting from the efforts aimed at capturing seats in Panchayat Raj institutions as status symbol led to groupism and factionalism that adversely affected the working of Panchayat Raj.
- Rural poverty, illiteracy and ignorance were together responsible for a low level of political awareness among the people of rural areas. That prevented them from adopting Panchayat Raj as a system of self-government and self development.
- Lack of funds for Panchayat Raj Institutions also came on the way of performing a large number of civic and development functions.

- Small size of the Block area also came on the way of development functions. In the structure of Panchayat Raj, the responsibility to implement development plans and programmes was largely vested with Panchayat Samiti, which worked at the Block or Taluk or Tehsil level. Each Block was a small area and its Panchayat Samiti often found the task of formulating development plans difficult and problematic for such a small area.

- Gram Sabha which was designed as a village assembly of all the adult people inhabiting a particular area, failed to become really operative. It only existed on paper. It did not come forward to undertake its assigned task of maintaining supervision and control over the Panchayat.

- In order to eliminate the defects noticed in Panchayat Raj, to give it more powers and wider representative base , the Parliament enacted the 73rd Amendment Act, 1992.

- The 73rd amendment to the Constitution enacted in 1992 made statutory provisions for the establishment, empowerment and functioning of Panchayati Raj institutions. Some provisions of this amendment are binding on the States while others have been left to be decided by respective State Legislatures at their discretion. The salient features of this amendment are as follows:

Some of the compulsory requirements of the new law are:

- Organisation of Gram Sabhas;
- Creation of a three tier Panchayati Raj Structure at the Zila, Block and Village levels;

- Almost all posts, at all levels to be filled by direct elections.
- Minimum age for contesting elections to the Panchayat Raj institutions should be twenty- one years.
- The post of Chairman at the Zila and Block levels should be filled by indirect election.
- There should be reservation of seats for Scheduled Castes/ Scheduled Tribes in Panchayats, in proportion to their population, and one-third seats for women in Panchayats .
- State Election Commission to be set up in each State to conduct elections of Panchayati Raj institutions.

- The tenure of Panchayati Raj institutions is five years, if dissolved earlier, fresh elections to be held within six months; and
- A State Finance Commission is set up in each State every five years.

Some of the provisions which are not binding on the states, but only guidelines, are:

- Giving voting rights to members of the Central and State legislatures in these bodies;
- Providing reservation for backward classes; and
- The Panchayati Raj institutions should be given financial powers in relation to taxes, levy fees etc. and efforts shall be made to make Panchayats autonomous bodies.

Composition of Panchayat Raj System:

The Panchayati Raj system, as established in accordance with the 73rd Amendment, is a three-tier structure based on direct elections at all the three tiers : village, intermediate and district. Exemption from the intermediate tier is given to the small states having less than 20 lakhs population. It means that they have freedom not to have the middle level of Panchayat. All members in a Panchayat are directly elected. However, a State may decide to represent members of the State Legislature and Parliament in district and middle level Panchayats. The middle level Panchayats are generally known as Panchayat Samitis. Provisions have been made for the inclusion of the chairpersons of the village Panchayats in the block and district level Panchayats.

The provision regarding reservation of seats for Scheduled Castes/Scheduled Tribes has already been mentioned earlier. However it should also be noted here that one-third of total seats are reserved for women, and one-third for women out of the quota fixed for Scheduled Castes/Tribes. Reservation is also provided for offices of Chairpersons. The reserved seats are allotted by rotation to different constituencies in a Panchayat area. State Legislatures can provide for further reservation for other backward classes (OBC) in Panchayats.

Term:

The Amendment provides for continuous existence of Panchayats. The normal term of a Panchayat is five years. If a Panchayat is dissolved earlier, elections are held within six months. There is a provision for State Level Election Commission for superintendence, direction and control of preparation of electoral rolls and conduct of elections to Panchayats.

Powers and responsibilities of Panchayats

State Legislatures may endow Panchayats with such powers and authority as may be necessary to enable the Panchayats to become institutions of self-government at grassroots level. Responsibility may be given to them to prepare plans for economic development and social justice. Schemes of economic development and social justice with regard to 29 important matters such as agriculture, primary and secondary education, health and sanitation, drinking water, rural housing, welfare of weaker sections, social forestry and so forth may be made by them.

Three-tier Structure of Panchayati Raj

1. Panchayats at Village Level

This is the basic or grassroots level of Panchayati raj. The Panchayat for a village or a group of villages includes (a) Gram Sabha, the symbol of direct democracy; (b) Gram Panchayat and (c) Nyaya Panchayat.

a. Gram Sabha

Gram Sabha consists of all adult residents within a village or group of villages. Thus it is the only institution of direct democracy in the country.

Generally, two meetings of Gram Sabha are held every year. In these meetings, the Gram Sabha as the general body of the people hear annual statement of accounts, audit or administrative report of Panchayats. It also recommends new development projects to be undertaken by Panchayats. It also helps in identifying poor people of the village so that they may be given economic assistance.

b. Gram Panchayat

The lower tier of the Panchayati raj system in the country is the village level Panchayat. It is known in most of the States as Gram Panchayat: The members of a Gram Panchayat are directly elected by the people. The number of members of a Gram Panchayat is fixed on the basis of village population. Hence, it differs from Panchayat to Panchayat. Election is held on the basis of single-member constituency. As already mentioned, one-third of the total number of seats are reserved for women; and some for Scheduled Castes and Tribes including one-third for women of Scheduled Castes and Tribes.

Chairpersons of Gram Panchayats are called by different names in different States as 'Sarpanch, Pradhan or President. There is a Vice-Chairperson also. Both are elected by the members of the Panchayat. Gram Panchayats generally hold their meetings once in a month. Panchayats at all levels constitute committees for transaction of their business.

c. Nyaya Panchayat

These are judicial Panchayats and reminder of ancient village Panchayat that settled local disputes. They are set up to provide speedy and inexpensive justice. Jurisdiction of Nyaya Panchayat varies from State to State – one such Panchayat is set up for five or more gram Panchayats. Their tenure is between 3 and 5 years, as determined by State law. Nyaya Panchayats generally deal with petty civil and criminal cases, and can impose fine upto Rs. 100/ only. There are no lawyers to plead the cases in Nyaya Panchayat. Parties to the disputes argue their own cases.

2. Panchayat Samiti

The second or middle tier of the Panchayati raj is Panchayat Samiti which provides a link between Gram Panchayat and Zila Parishad. The strength of a Panchayat Samiti also depends on the population in a Samiti area. In Panchayat Samiti, some members are directly elected. Sarpanchs of gram panchayats are ex-officio members of Panchayat Samitis. However, all the sarpanchs of Gram Panchayats are not members of Panchayat Samitis at the same time. The number varies from state to state and is rotated annually. It means that only chairpersons of some Gram Panchayats in a Samiti area are members of Panchayat Samiti at a time. In some Panchayats, members of Legislative Assemblies and Legislative Councils as well as members of Parliament who belong to the Samiti area are co-opted as its members. Chairpersons of Panchayat Samitis are generally elected from among the directly elected members.

3. Zila Parishad

Zila Parishad at the district level is the uppermost tier of the Panchayati Raj system. This institution has some directly elected members whose number differs from State to State as it is also based on the size of population. Chairpersons of Panchayat Samitis are ex-officio members of Zila Parishads. Members of Parliament, Legislative Assemblies and Councils belonging to the districts are also nominated members of Zila Parishads. The chairperson of a Zila Parishad, called Adhyaksha or President, is elected from among the directly elected members. The vice-chairperson is also elected similarly. Zila Parishad's meetings are conducted once in a month. Special meetings can also be convened to discuss special matters. Subject committees are also formed.

Functions of Panchayat Raj Institutions

All Panchayat Raj institutions perform such functions as are specified in state laws relating to Panchayat Raj. Generally speaking the functions are as under:

Functions of Gram Panchayat

Some states distinguish between obligatory (compulsory) and optional functions of Gram Panchayats while other states do not make this distinction. The civic functions relating to sanitation, cleaning of public roads, drains and ponds, public toilets and lavatories, primary health care, vaccination, supply of drinking water, constructing public wells, street lighting, social health and primary and adult education, etc. are obligatory functions of village Panchayats. The optional functions depend on the resources of the Panchayats. They may or may not perform such functions as tree plantation on road sides, setting up of breeding centres for cattle, organising child and maternity welfare, promotion of agriculture, etc.

After the 73rd Amendment, the scope of functions of Gram Panchayat was widened. Such important functions like preparation of annual development plan of Panchayat area, annual budget, relief in natural calamities, removal of encroachment on public lands, implementation and monitoring of poverty alleviation programmes are now expected to be performed by Panchayats. Selection of beneficiaries through Gram Sabhas, public distribution system, non-conventional energy source, improved Chullahs, bio-gas plants have also been given to Gram Panchayats in some states.

Functions of Panchayat Samiti

Panchayat Samitis are at the hub of developmental activities. They are headed by Block Development Officers (B.D.Os). Some functions are entrusted to them like agriculture, land improvement, watershed development, social and farm forestry, technical and vocational education, etc. The second type of functions relates to the implementation of some specific plans, schemes or programmes for which funds are earmarked. It means that a Panchayat Samiti has to spend money only on that specific project.

Functions of Zila Parishad

Zila Parishad links Panchayat Samitis within the district. It coordinates their activities and supervises their functioning. It prepares district plans and integrates Samiti plans into district plans for submission to the State Government.

Zila Parishad looks after development works in the entire district. It undertakes schemes to improve agricultural production, exploit ground water resources, extend rural electrification and distribution and initiate employment generating activities, construct roads and other public works.

It also performs welfare functions like relief during natural calamities and scarcity, establishment of orphanages and poor homes, night shelters, welfare of women and children, etc.

In addition to that, Zila Parishads perform functions entrusted to them under the Central and State Government sponsored programmes. For example, Jawahar Rozgar Yojna is a big centrally sponsored scheme for which money is directly given to the districts to undertake employment-generating activities.

Sources of Income of Panchayats

Panchayats can discharge their functions efficiently only if they have sufficient financial resources. For resources, Panchayats depend mainly on grants from State Government. They also have taxation powers and have some income from owned or vested assets. They may get a share in the taxes, duties, tolls and fees that are levied and collected by the State Government. Let us now see what financial resources Panchayats have to perform their functions.

Gram Panchayat

In most States the power of levying taxes is vested in gram Panchayats. House tax, tax on cattle, immovable property, commercial crops, drainage tax, sanitation fee, tax on produce sold in village, fee for supply of water to households, lighting tax are some of the taxes and fees levied by Panchayats. Panchayats can also levy entertainment tax on temporarily stationed theatres, taxes on animals and non-mechanically propelled vehicles plied for hire.

Gram Panchayats also receive funds as income from property owned by them as common grounds, jungles, cattle ground etc. The sale proceed of dung, refuse and carcasses (dead bodies of animals) is also retained by gram Panchayats. They also receive their share in land revenue from the State.

Panchayat Samitis

Panchayat Samitis can impose tax on facilities provided by them as water for drinking or irrigation purposes, lighting arrangements, tolls for bridges maintained by them. The property of Panchayat Samitis includes public buildings, public roads constructed or maintained out of their funds and all land or other property transferred to them by the government. Panchayats receive income from the property vested in them. They also receive grants from the State Governments. Funds are transferred by Zila Panchayats or State Governments along with schemes to be implemented by the intermediate institutions of Panchayati Raj.

Zila Parishads

Zila Parishads are also authorized to impose taxes. They may impose taxes on persons carrying on business in rural areas for six months, taxes on brokers, commission agents in markets established by them, also tax on sale of goods in these markets. Tax on land revenue can also be imposed by Zila Parishads. When development schemes are entrusted to them, necessary funds are also provided. They also receive grants from the State, donations from charitable institutions, and may also raise loans.

Hence, the 73rd Amendment Act has ensured the continued operation of Panchayat Raj. The revamping of Panchayat Raj by this Amendment has been aimed at the objective of making the local government institutions well- functioning, active and productive instruments of Indian democracy at the grassroots level. These are designed to act as agents of rural development as well as for ensuring sustained development of rural living.