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Constitutional Ethos:

Democracy for Social and Economic Welfare

Introduction

> "A delay in justice, is injustice."
>
> –Dr. B. R. Ambedkar

The Constitution of India aims to create a **Moral Code of Conduct** in our **society** and **governance.** As part of it, it pledges to secure **Justice - social, economic** and **political** - to all its citizens. Justice is a universal principle which guides our decisions on what is right and what is wrong. Justice elevates the **dignity of an individual** and **strengthens democracy** by creating a **lawful society.**

For India, Justice is an obligation as well as a challenge because of prevalent **social-economic inequalities,** strengthened by **social hierarchies** and **unequal access to resources.** As all three types of justice are closely related to each other, it becomes part of the Indian Constitutional Ethos. While India has made significant progress in the last 75 years of Independence, a lot still needs to be done for Justice in society.

In this context, we will discuss the principle of **Democracy** and **Social and Economic Welfare.** Each principle starts with a basic idea on it, followed by the objective behind it. Next, we will discuss - How these principles form the basis of the executive and legislative action in the matters of governance and implementation. Subsequently, the significance of these principles and related concerns is expressed. Based on it, we have identified the solutions to these concerns, i.e. the approach we should adopt to ensure Justice to all.

Principle I: The Principle of Democracy

◈ The word **democracy** comes from the **Greek** words **"demos",** meaning **people,** and **"kratos"** meaning **power.** So, democracy is defined as "power of the people" a way of governing which depends on the will of the people. This power depends upon presence of the features of democracy such as:

- ◉ **Rule of Law,**
- ◉ **Respect for Rights,**
- ◉ **One person one vote one value,**
- ◉ **Free and Fair elections, and**
- ◉ **Major decisions by elected leaders.**

◈ In today's political landscape, many **different models** of **democratic government (political systems) exist.**

◈ While no two systems are the same, certain common features do exist to measure the presence of democracy.

Democracy in India and its objectives

Considered as **'mother of democracy'** (India has the oldest-known traditions of king elected by people and collective decision-making), the Indian Constitution provides for a **Political System** with **President as head of state,** and an **executive headed by the Prime Minister.**

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The laws are made by the **representatives of the people** – selected through elections (**representative democracy**). Set in difficult circumstances of high poverty, illiteracy and with society divided by caste, religion, and language, the **key objectives of India's democracy are:**

- **Citizen-centric governance** which takes care of every section, especially the marginalized sections.
- **Political Representation** to any kind of thought and ideology providing ability to form associations.
- **People-participation** in governance for enabling political justice.
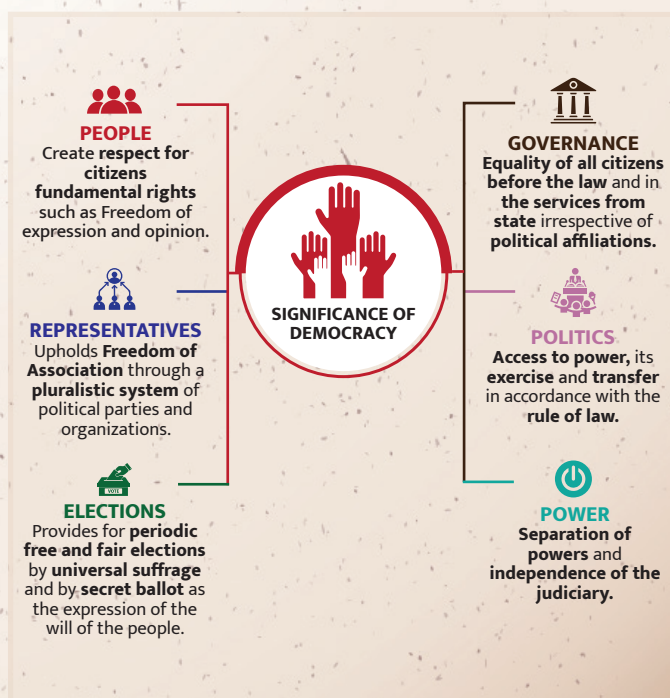- **Equality of all citizens** before the law.

Implementation of these objectives in India

- **Political Institutions:** Presence of **multiple national** and **state political parties** - the **most visible political institution** in a democracy.

  - A **political party** is 'a group of people who come together to contest elections and hold power in the government'.

  - They **shape public opinion** and **offer citizens a choice** in governance by competing in elections.

  - The elected party (parties) fulfill their mandate by **enforcement of policies** and **laws** for the betterment of society while others hold them accountable by acting as opposition.

- **Electoral Institutions:** Election Commission of India (ECI) acts as an **autonomous constitutional authority** to administer Union and State election processes in India for **free and fair elections (Article 324)**. In the words of Dr. B. R. Ambedkar-

> "The greatest safeguard for purity of election, for fairness in election, was to take away the matter from the hands of the executive authority and to hand it over to some independent authority."
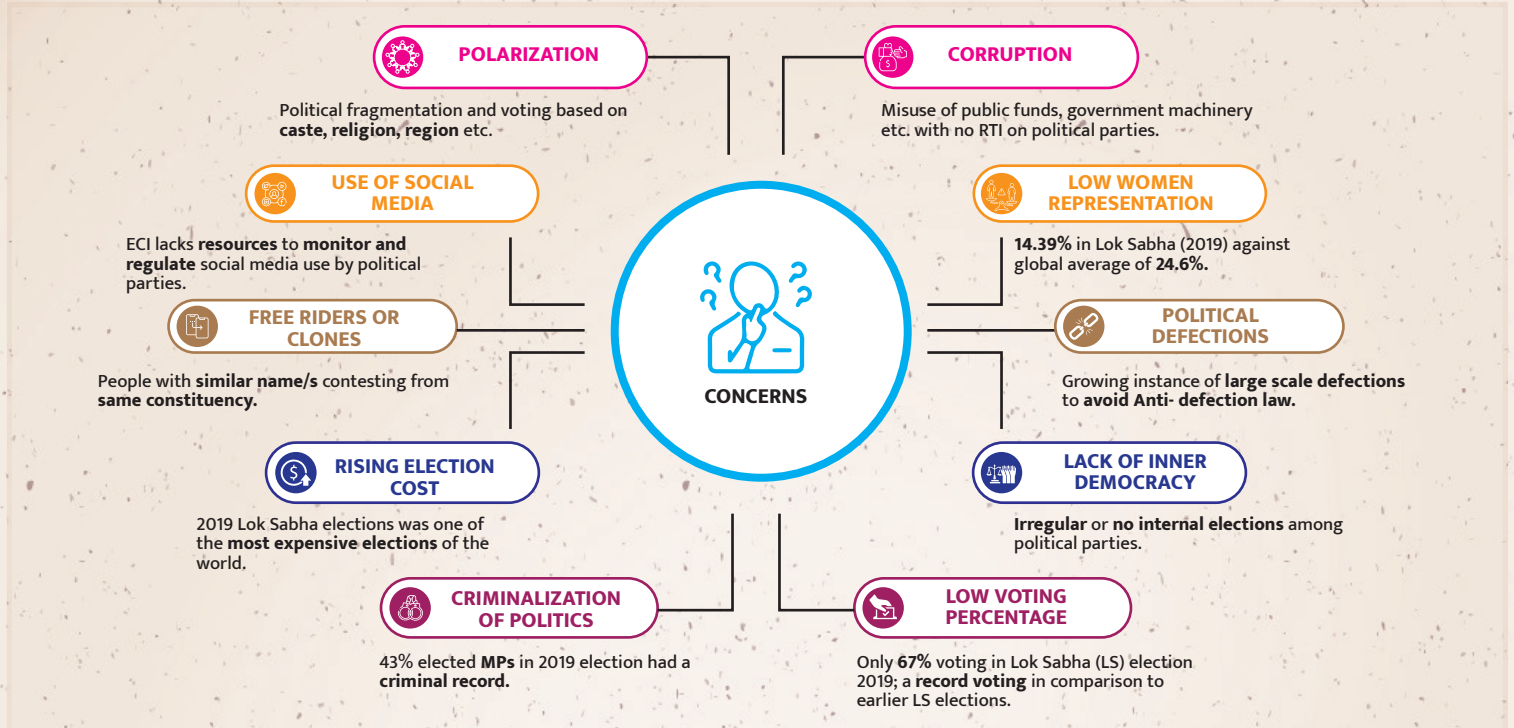
  - Since independence, the ECI has held **17 national** and around **390 state elections**. Also, it carries **voter education initiatives** to increase their participation in the democratic and electoral process.

  - **Universal Adult Suffrage (Article 326),** i.e., right to vote extended to all citizens not less than eighteen years and not disqualified under any other law. E.g., **Section 62 (5)** of the **Representation of the People Act (RPA), 1951** deprives the prisoners of their right to vote.

- **Regulatory frame for Political institutions and the electoral process:**

  - **Disqualification of MLAs and MPs** (Article 102 and 191) on various grounds. E.g., Conviction for certain offences under **Section 8** of the **Representation of the People Act, 1951.**

  - **Anti-Defection Law (Tenth Schedule)** to prevent political defections and bring political stability by making members of parliament more responsible to their parties.

  - **Bar to interference by courts in electoral matters (Article 329).** The **Supreme Court of India** (in **K Venkatachalam v A. Swaminickan, 1999**), ruled that Bar of **Article 329** (b) doesn't apply when the whole election process is over and on cases on **Article 191 and 193** of the Constitution.

  - Other electoral reforms such as the option of **None of the Above (NOTA)**, use of **Voter Verifiable Paper Audit Trail (VVPAT)** along with the Electronic Voting Machines (EVMs) etc. have further strengthened the democracy.

SIGNIFICANCE OF DEMOCRACY

PEOPLE Create **respect for citizens fundamental rights** such as Freedom of expression and opinion.

REPRESENTATIVES Upholds **Freedom of Association** through a **pluralistic system** of political parties and organizations.

ELECTIONS Provides for **periodic free and fair elections** by **universal suffrage** and by **secret ballot** as the expression of the will of the people.

GOVERNANCE Equality of all citizens before the law and in **the services from state** irrespective of **political affiliations.**

POLITICS Access to power, its **exercise** and **transfer** in accordance with the **rule of law.**

POWER Separation of powers and **independence of the judiciary.**

Concerns to India's Democratic Ecosystem

India's **large population** and its **composite culture** make India the **world's largest** and one of most **dynamic democracies**. But gaps still exist because of the vicious cycle of **poor governance, poverty, corruption, inequality, lack of social cohesion and episodes of violent conflicts**. It weakens our democracy and gives rise to concerns which undermines democracy.

POLARIZATION
Political fragmentation and voting based on **caste, religion, region** etc.

CORRUPTION
Misuse of public funds, government machinery etc. with no RTI on political parties.

USE OF SOCIAL MEDIA
ECI lacks **resources** to **monitor and regulate** social media use by political parties.

LOW WOMEN REPRESENTATION
14.39% in Lok Sabha (2019) against global average of **24.6%**.

FREE RIDERS OR CLONES
People with **similar name/s** contesting from **same constituency**.

POLITICAL DEFECTIONS
Growing instance of **large scale defections** to **avoid Anti- defection law**.

CONCERNS

RISING ELECTION COST
2019 Lok Sabha elections was one of the **most expensive elections** of the world.

LACK OF INNER DEMOCRACY
Irregular or **no internal elections** among political parties.

CRIMINALIZATION OF POLITICS
43% elected **MPs** in 2019 election had a **criminal record**.

LOW VOTING PERCENTAGE
Only **67%** voting in Lok Sabha (LS) election 2019; a **record voting** in comparison to earlier LS elections.

In the past, India has seen measures to clean Indian politics and strengthen its democracy like–

- **NN Vohra committee (1993)** on "Criminalization of Politics",

- **Indrajit Gupta Committee (1998)** on State funding of elections,

- **Introduction of electoral bonds** under the **Electoral Bond Scheme (2018)** for transparency in political funding etc.

But the **committee's recommendations** have not been implemented to a large extent, or the measures lack the desired provisions for effective results. E.g. the **financing of political parties** is still **opaque** for the public as electoral bonds don't bear the name of the donor. Such a scenario, further aggravates the issues in following ways-

- It hurts **people's trust in democratic institutions**. Also, the frequent **allegations of official corruption** and slow investigations further damages **India's global reputation.**

- It reduces **foreign trust** and **investments** in India, giving rise to other ills such as **slower economic development, limitations on resources** for social and economic welfare and **increased social divisions**, etc.

- In certain parts of India, **violent conflicts** (including **terrorism**) are still a major threat to democratic processes.

- In recent times, **environmental challenges** (climate change), **youth unemployment, migration** (e.g., Rohingyas issue) etc. have given rise to new concerns; requiring efforts to enhance **democratic resilience.**

> Democratic Resilience is defined as 'the ability of democratic ideals, institutions and processes to survive and prosper when confronted with change, challenges and the crises they may produce.'

Democratic Resilience as the Way Forward

Democracy is the basis of building a **peaceful and inclusive society** (SDG 16). It is a form of non-violent conflict management for **harmonious existence among people.** Therefore, we need multiple measures to make our **democracy more resilient and inclusive** such as:

➲ **Transparency and Integrity** through,

- ◎ **Political Reforms** E.g., **Proper record maintenance** on political funding and members; Bringing Political Parties in the ambit of Right to Information; **Implementation of party's** own constitution for inner-party democracy (e.g., **Regular elections** for highest posts in the party) etc.

- ◎ **Promoting Good Governance** to increase people-participation.

- ◎ **Fair decision-making** by setting aside personal interests.

- ◎ **Punish corrupt officials** to gain the trust of citizens and others.

- ◎ **Introducing State Funding (kind or cash)** to overcome the influence of money power.

- ◎ **Capacity Building of ECI** through increased resources and expertise to handle elections and implement **Model Code of Conduct.**

➲ **Inclusive Transition** through,

- ◎ **Political Empowerment of Women**, i.e. **reservation of seats** in legislature or at party level in ticket distribution.

- ◎ **Representation for minorities and marginalized sections** for social cohesion.

➲ **Encourage Accountability** through,

- ◎ **Principles based politics** to avoid the use of unethical means for political gains.

- ◎ **Institutional Resilience** to protect them from corrupt influences.

- ◎ **Free, independent and pluralistic media** to perform its duties as **4th pillar** of Indian Democracy.

➲ **Improve Citizen Engagement** through,

- ◎ **Strong civil society** to organize people across social divisions.

- ◎ **Political education of youth** for greater political engagement and oversight.

- ◎ **Harnessing Innovation and technology** to engage people (e.g. public opinion surveys).

➲ **Social and Economic Inclusion,** i.e. removal of social exclusion and economic inequalities at individual and social group's level. This includes the tax policies, education, health, conditional cash transfers etc. In words of **John Rawls,**

> **"It may be expedient, but it is not just that some should have less in order that others may prosper."**

Principle II: Social and Economic Welfare

→ Borrowed from the **Irish Constitution**, social and economic welfare is part of the **Directive Principles of State Policy or DPSP [Part IV (Article 36-51) of the Constitution].**

  ↪ **Dr B. R. Ambedkar** described them as the **'instrument of instructions'.**

→ **Article 37** specifies them as the **fundamental principles of governance** and makes it a **duty of the State** to apply these principles in making laws.

→ **Article 38** calls for the promotion of **welfare of the people** by securing and protecting a **social order** based on **social, economic** and **political justice.**

→ Overall, DPSPs connect the **policy measures** and **laws** from Centre and State with the **social** and **economic welfare** of people, their culture and beyond.

Political Justice
It means a system free from political arbitrariness, i.e. there should be political fairness in the working of the government.

Social Justice
It means equal social opportunities are available to every person for his/her personal development without any discrimination based on race, sex or caste.

Economic Justice
It means economic equality among all in terms of economic opportunities and removal of disabilities which causes inequality.

Broad objective of this principle and implementation in India

Comprising an extensive list on **social, economic** and **political reforms** for a **modern, progressive** and **welfare state,** the **main objective behind DPSPs is to create a welfare State, establish Social and Economic Democracy** and **provide Moral Guidance** to the State on matters such as environmental safeguards, international peace and security etc.

Implementation of this principle can be seen throughout the legislations, from articles mentioned in the Constitution, to legislations enacted by both Centre and States-

→ DPSPs carry a unique blend of **Gandhian philosophy** mixed with the popular **Socialist** and **Western Liberal** ideas.

  ↪ Some **traditional ideal**s are also included such as **prohibiting the slaughter of cows and promotion of international peace and security (Vasudhaiva Kutumbakam).**

→ Together, they set the direction to be taken as a **Welfare State,** i.e. to work for **social** and **economic welfare.**

CLASSIFICATION OF DPSPs

GANDHIAN PRINCIPLES
The Inspirations, vision and ideas from the life of Gandhi Ji. E.g. Sarvodaya (Article 46), Gram Swaraj (Article 40) etc.

Socialistic Principles
Socialist ideas of Equitable distribution of resources (Article 38), Avoiding Concentration of Wealth (Article 39), Right to work and education (Article 41), etc.

Western-Liberal Principles
Western ideas of Equality (Article 39A), Uniformity (Article 44), Science (Article 48) etc.

→ Based on the **available resources** and **political will of leaders,** a number of social and economic welfare principles are implemented as well, such as:

| Measures for Social and Economic Welfare | → **Equal Justice and Free Legal Aid** under **Article 39A.**

↪ **Legal Services Authorities Act, 1987** for nationwide uniform network for free and competent legal services to weaker sections of the society.

→ **Promotion of cottage industries** and **co-operative societies** under **Article 43** and **Article 43B.**

↪ Dedicated **Ministry of Cooperation** to provide a separate administrative, legal and policy framework for strengthening the cooperative movement.

→ **Promotion of educational and economic interests** of Scheduled Castes, Scheduled Tribes and other weaker sections under **Article 46.** |

- Right to Education as Fundamental Right, Pre-Matric and Post-Matric scholarships for SC, ST and OBCs; Recognition of Forest Rights of Tribals, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 etc.

- **Just and humane conditions of work** under Article 42 and **Living wages** under **Article 43.**
  - Minimum Wages Act 1948, Industrial Employment (Standing Orders) Act 1946, The Factories Act 1948, Maternity Benefit Act 1961 etc.

- **Provision for early childhood care and education to children below the age of six years** under **Article 43.**
  - **National Education Policy, 2020** giving importance to universalization of **Early Childhood Care and Education (ECCE)** with a 2030 target to ensure that all students entering Grade 1 are school ready.

- Duty of the State to **raise the level of nutrition** and the **standard of living** and to **improve public health** under **Article 47.**
  - **National Food Security Act 2013, National Health Policy 2017, Ayushman Bharat (National health Protection Scheme)** etc.

- **Organisation of agriculture and animal husbandry on modern and scientific lines** under **Article 48.**
  - Creation of a network of **Krishi Vigyan Kendras, Agriculture Technology Management Agency (ATMA) Scheme, Soil Health Card, National Project for Cattle and Buffalo Breeding** etc.

Significance of the idea- Social and Economic Welfare

- **Lays foundations of an equitable society and welfare state** by prescribing a set of social and economic objectives for the legislature and the executive.
  - It helps to achieve **participative justice** and **distributive justice** by overcoming barriers of exclusiveness within society on the basis of superiority and inferiority.

- **Puts a moral obligation on the State** to achieve **economic** and **social democracy.**
  - These principles are remembered by the state while framing laws and policies because of the **educative value** and **political justifiability** of these principles.

- **Strikes a balance between individualism and socialism** by determining the scope of fundamental rights.
  - In **Minerva Mills Ltd. v Union of India,** Supreme Court held that the doctrine of harmonious construction should be applied because neither of the two has precedence over each other.

Doctrine of Harmonious Construction

The fundamental principle behind this doctrine is, a statute has a legal purpose and should be read in its totality i.e., in conjunction with all clauses of the statute and other statutes.
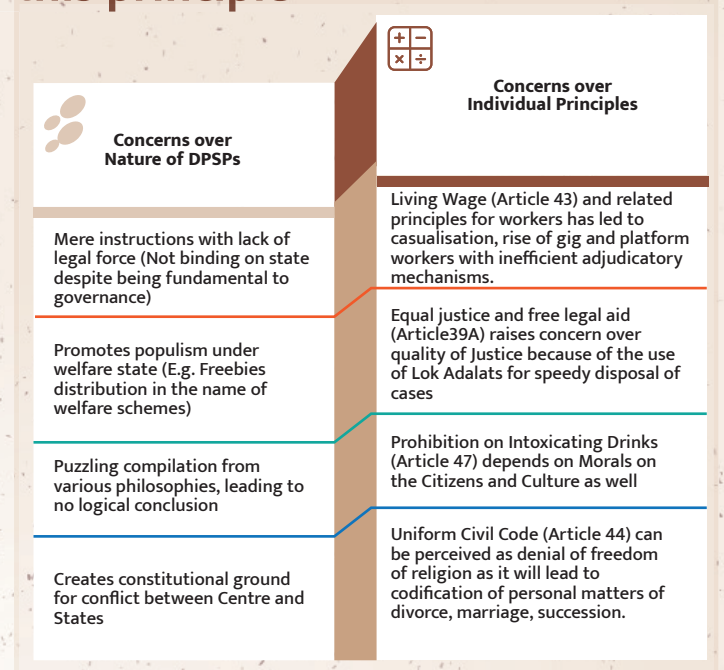
- **Differentiate between a Welfare State** and Police State by acting as a yardstick to measure government performance.
  - **DPSPs** are **not enforceable by law** but they are indirectly enforced by **Public opinion** (voting).

Concerns in implementation of this principle

Based on the **prescribed principles** and the **nature of Part IV, two main types** of concerns are highlighted in achievement of **social** and **economic welfare.**

Also, the **absence of timelines, clear ideology** and **administrative inefficiencies** further delays the achievement of **social and economic welfare.** For instance, it was only in 2002 that the **right to education** became a fundamental right for children in the range of 6–14 years.

Wide gaps still exist towards achievement of social and economic welfare because of **high unemployment, inequalities** (e.g. high participation in women domestic duties or unpaid work), **educational and health gaps,** etc. This is in addition to the limitations of state finances and administrative inefficiencies.

Concerns over Nature of DPSPs

- Mere instructions with lack of legal force (Not binding on state despite being fundamental to governance)
- Promotes populism under welfare state (E.g. Freebies distribution in the name of welfare schemes)
- Puzzling compilation from various philosophies, leading to no logical conclusion
- Creates constitutional ground for conflict between Centre and States

Concerns over Individual Principles

- Living Wage (Article 43) and related principles for workers has led to casualisation, rise of gig and platform workers with inefficient adjudicatory mechanisms.
- Equal justice and free legal aid (Article39A) raises concern over quality of Justice because of the use of Lok Adalats for speedy disposal of cases
- Prohibition on Intoxicating Drinks (Article 47) depends on Morals on the Citizens and Culture as well
- Uniform Civil Code (Article 44) can be perceived as denial of freedom of religion as it will lead to codification of personal matters of divorce, marriage, succession.

Way forward to realizing the ideal of Social and Economic Welfare

The ideal of Socio-Economic Welfare is holistic in nature and depends on multiple factors. Therefore, to achieve these ideals, a multi-dimensional effort is warranted-

- **Building Livelihood: Identify Livelihood Support Measures** for marginalized people in urban areas at national level on lines of MGNREGA in rural areas.
- **Restrict Populism: Define Freebies** with adequate measures to hold political parties accountable to their objectives.
- **Work towards Economic Justice: Specify the private sector role** in social and economic welfare. E.g., providing equal opportunities at the workplace, formalization, living wages etc.
  - **Economic policies** must provide opportunities for equality of status and opportunity while working towards progressive and open economy.
- **Optimized Judicial System**: Design a system which looks at swift disposal of cases without compromising the focus on just and fair outcomes.
- **Aware Civil Society: Educate people** on social and economic welfare principles to strengthen popular sanction for laws and policies
  - This can help in reaching a common ground on more conflicting principles as well such as ideas like **Uniform Civil Code.**
- **Improving Well-being: Strengthen the Education and Health system** through improved infrastructure and easier accessibility for improved outcomes.
- **State as an integrated entity: Promote Cooperative federalism** with measures towards optimum utilization of resources and handle administrative bottlenecks. This is possible only when both Centre and State cooperate constructively for the welfare of the citizen.

Conclusion

Creating a stronger and sustainable democracy demands a more inclusive economy and society. The Constitution provides a framework for both. The legislature and executive have to take the cue and translate them into laws and governance. Further, they must engage others, especially youth, through more participatory and representative democratic institutions to achieve the constitutional ethos.

CONSTITUTIONAL ETHOS I: DEMOCRACY FOR SOCIAL AND ECONOMIC WELFARE

Justice - social, economic and political – is a **universal principle;** also pledged to the citizens of India by the Constitution.

The **democratic form of government** and **Directive Principles of State Policy** provides the framework for Justice and achieve **various objectives.**

But achieving Justice is a complex task because of **socio-economic inequalities,** which are strengthened by **traditional hierarchies** and **unequal access to resources.**

Framework to bring Socio-Economic Justice

- Presence of **multiple political parties** with ECI to regulate them.
- **Election System** under ECI with **Universal Adult Suffrage** and multiple reforms in the election process.
- **Laws and Policies** to address social and economic inequalities. E.g. Measures for **Co-operative societies, Health** and education.
- **Use of science and technology** to bring positive change in people's life.

Importance of ideas of this framework

- **Protects People's Rights** enshrined in the Constitution.
- Formation of a **Representative Government.**
- **Rule of Law** with **welfare state** to create an **equitable society.**
- **Separation of power** and an **independent judiciary.**
- Puts **moral obligation on the State** to work for social and **economic welfare.**
- Strikes a **balance** between **individualism and socialism.**

Concerns in implementation

- **Opaque** functioning of **political parties** with lack of inner democracy.
- Issues of **Corruption, lack of transparency** etc. in governance.
- Problems of **social polarization, misuse of technology, violence** etc.
- **Limited success** in achieving **social** and **economic welfare** because of no timelines, non- justiciability etc.
- **Creates ground** for constitutional conflict, cultural and religious tensions etc.
- **Emergence of new challenges** like unemployment, populism, workforce casualization etc.

Way Forward for Justice

- **Enhance Democratic Resilience:**
  - Building a culture of **transparency and integrity** in political parties and government.
  - Measures to **ensure inclusive transition** and improve **citizen engagement.**
  - Make **government accountable** with steps for **Social** and **Economic Inclusion.**
- **Steps for Social and Economic Welfare:**
  - **Detailed Quantitative Assessment** on situations based on the current contexts.
  - Measures to **support livelihood, reform judicial system, infrastructure building** etc.
  - Identifying the **role of private sector, media,** and **civil society.**