

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**I. THE CONSTITUTION**

The Constitution is a set of fundamental basic rules governing the politics of a nation, and reflecting the exercise of political power. It lays down the framework and principal organs of the government together with their functions as well as the modalities of interactions between the state and its citizens. With the exception of Israel, New Zealand and the United Kingdom, most of the democratic countries of the world possess a written Constitution. No Constitution is entirely anew – so the Constitution of the Republic of India is no exception. Our Constitution is the product of deliberations of a body of eminent people who sought to improve upon the then existing systems, both prevailing in India and in other countries. It shall be appropriate to have a glance on the constitutional developments during the British rule in India, the legacy of its rule on which was founded our Constitution by the Indian Constituent Assembly.

**1.1 The Evolution of the Constitution:  
The British in India**

The British period in India began with the incorporation of the English East India Company (commonly styled as the Honorable East India Company— HEIC, also referred to as John Company, and the Company Bahadur, in the then India) in 1600 in England, and lasted till 1947 when the British rule ended and India attained independence on August 15. The evolution and growth of our Constitution is closely related with the British rule (of the Company till 1857 and of the Crown till 1947) in India. We may broadly divide the British period in India into the following phases:

- a) 1600-1765 : The Advent of the British in India:
- b) 1765-1858 : The Company's Rule in India:
- c) 1858-1947 : Rule of the British Crown in India.

# Spardha Mithra coaching Centre

## Indian Polity and Governance

**I. I (a) 1600-1765 : The Advent of the British in India:** The Britishers came to India as traders. forming the English East India Company and securing a Charter from Queen Elizabeth I in 1600 (who herself was a shareholder of the Company) which authorized the Company to organize and send trading expeditions to the East Indies. The Charters were initially granted for a period of 15 years and later, for 20 years. and could be terminated on two years' notice. The Charters could be, and actually were renewed periodically, provided they did not adversely affect the interests of the Crown and the English people.

In course of time. the English East India Company set up factories or trading centers (Surat – 1612, Musulipatam – 1639, and Hariharpur – 1690). later developing into Madras, Bombay (now Mumbai ) and Calcutta (now Kolkata) i.e. into chief settlements or presidencies of the Company to be controlled each by the President and a council composed of the Company's servants. By 1647. the Company had 23 factories in India. For the governance of the Company, it was itself given powers to frame laws, make orders and issue ordinances. The Company obtained lease through the Charters of 1609 and 1661. The Charter Act of 1726 gave the Company and administrators in India vast legislative powers. The Company already had the power to keep an armed naval force for the security of its possessions in India. Till the second half of the 18th century, the Company remained primarily a trading concern. However, after the disintegration of the Mughal Empire. the Company took advantage of the chaotic conditions prevailing in the then India. and established itself as the unrivalled master of the subcontinent. The victory of the Company in the battle of Plassey in 1757. and later. the battle of Buxar in 1764. put the British rule in India on firm grounds.

### **1.1(b) 1765-1858 : The Company's Rule in India:**

The grant of Diwani (concerned mainly with the collection of revenue and civil justice) by Shah Alam II to the Company in return for 26 lakh rupees annually and of Nizamat (concerned mainly with administration, military power and criminal justice) by the Nawab of Bengal Shuja-ud-

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Daula to the Company in return for 53 lakh rupees annually had made the East India Company the real master of Bengal. Bihar and Orissa. This marked the beginning of the territorial sovereignty of the Company. trading activities dwindling gradually and the political activities acquiring power speedily. The period between 1765 and 1858 was largely a period when the government of England managed the affairs of the Company both In England and in India, until the British Crown took over the administration of the vast territories of the Company in India. while the Company. on the other, ruled over its territorial possessions and the subjects living therein. We may study. briefly, this phase of the Company's rule in India into two parts:

- (i) the laws the British Government and the Company enacted during 1765 and 1858: and
- (ii) (ii) the administration of the Company on areas under its control in India.

#### **I.1(b)(i) Laws Enacted by the British Government between 1765-1858 : The Regulating Act of 1773:**

(i) The Company's affairs, both in India and in England were regulated. its autocratic power was curbed, law and order in its possessions in India were restored:

(ii) The Court of Directors (as managers of the Company in England) hitherto elected every year, were to be elected for four years. one-fourth retiring every year:

(iii) all the correspondence from India were to be laid before the Government, thus asserting the Parliament's control over the Company;

(iv) the Governor of Bengal was, henceforth. to be known as the Governor-General of Bengal. whose council was to consist of four members and each holding office for five years:

(v) the Governor-General was to have authority over the presidencies of Madras and Bombay;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(vi) The newly formed Supreme Court was to have both original and appellate jurisdiction. The Pitts India Act of 1784:

(i) A Board of Control with six members (Secretary of State, the Chancellor of Exchequer, and four members of the Privy Council) was to superintend, direct and control activities relating to civil, military, revenue affairs of the British territorial possessions of the Company in India;

(ii) The Board of Control was to receive all copies of transactions sent to or received from the Company;

(iii) The Board of Control had the power to approve or disapprove any order of the Directors;

(iv) Power of patronage was retained by the Court of Directors;

(v) The Governor-General's council was to have three members, likewise the Governor's Council consisted of three members;

(vi) All appointments were to be made by the Directors, removal and recall by the King of England.

#### **The Charter Act of 1813:**

(i) The Company was deprived of the monopoly of trade except trade with China and trade in tea;

(ii) Rupees one lakh were to be spent on education in India. The Charter Act of 1833

(i) The centralization of the powers began : the Governor-General of Bengal was to be the Governor-General of India;

(ii) The Presidencies (of Madras, Bombay and Agra) lost all powers of legislation, and were to be governed by the laws of the Governor-General-in-Council;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iii) A fourth member in the Governor-General's Council was added, a law member;

(iv) The Company lost its monopoly of trade in tea and trade with China;

(v) The Company was no more now a trading body but had become political and territorial one, acting on behalf and in trust of the British Crown.

#### **The Charter Act of 1853:**

(i) The strength of the Court of Directors was reduced from 24 to 18. six out of which were to be appointed by the Crown;

(ii) The Directors' power of patronage was curbed;

(iii) The territories and revenues of India were to be granted to the Company for 20 years as before, but "only until Parliament shall otherwise" provide;

(iv) The legislative council was formed to include 12 members : Governor-General. commander-in-chief, 4 members of the Governor-General's council and six additional members (Chief Justice of Bengal, one judge of Calcutta Supreme Court, and 4 civil servants, from each of the four presidencies : (Madras, Bombay, Bengal, Agra);

(v) A separate Governor of Bengal was now appointed for the Bengal presidency.

#### **The Act for the Better Government of India, 1858:**

(i) The power was transferred from the Company to the British Crown;

(ii) The Board of Control was abolished and its place was taken over by the India Council consisting of the Secretary of State for India with 15 members to advise the British Government on matters relating to India;

(iii) The Governor-General of India was made viceroy of India;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iv) All hitherto treaties and obligations of the Company were made binding on the British Government.

#### **1 .1(b)(ii) : Company's Administrative Legacy (1765-1858):**

The Company's India period passed through two phases: trading, trading and ruling. Until the period between 1600 and 1765, the East India Company remained mostly as the trading concern, the period when it earned a lot for its proprietors in England and its servants in India, a period when it paved the way for the industrial revolution in England, and a period when it turned India. ultimately, into a British colony. Between 1765 and 1857. the Company began ruling alongside its trading activities, a period when it enjoyed the Diwani and the Nizamat rights. leading gradually to become a political and territorial power in India. Having acquired the vast territories through annexation and policies such as those of 'lapse', the Company had to devise suitable methods of administration to control it. The civil service, as introduced by Lord Cornwallis (1786-1793, 1805-1807), had managed to survive relatively intact until the present day. The army. the police, the judicial system, the rule of law. the education policies, though penetrated into India by the Company for fulfillment of its imperialistic designs, remained to serve as the administrative requirements by independent India, with suitable changes here and there. By the time. the Crown took over India's administration from the Company. the Britishers had a well-founded civil. military and judicial base to work on for their rule over British India.

**I.1 (c) : 1858-1947: Rule of the British Crown in India:** The British territories acquired by the Company in India came under the direct rule of the British Crown in 1858, which rule remained on India till August 15, 1947. Much of our constitutional developments, leading to the making of our present Constitution, owe their existence to this period (1858-1947).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

#### **I.I(c)(i) : Laws Enacted by the British Government between 1858-1947 : The Indian Councils Act, 1861:**

(i) A fifth member was added to the Governor General's Council (the executive council) — he was to be a gentleman of legal profession, a jurist

(ii) portfolio system was introduced, to conduct the convenient business of the executive council

(iii) the Secretary of State could appoint the Commander-in-Chief as an extraordinary member of the Governor General's Council,

(v) for legislative purposes, the additional members were added to the Governor General's executive council, who were to be not less than six and not more than 12, half of whom had to be non-officials

(vi) the Legislative Council was to make laws and regulations for all persons in and outside British India,

(vii) all bills passed by the Legislative Council required the assent of the Governor General

(viii) all such laws were to be communicated to the Secretary of State who could disallow them with the approval of the Crown

(ix) the Governor General was empowered to alter or revoke any law passed by the provincial governments

(x) the Governor General was authorized to issue ordinances which would remain in operation for 6 months

(xi) the Governor General possessed the power to veto any measure,

(xii) each provincial Legislative Council had the additional members, between four and eight. half of them to be non-officials.

#### **The Indian Councils Act of 1892:**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (i) the number of additional members at the Central Legislative level was to have not less than 10 and not more than 16 members
- (ii) the Governor General was to make regulations for the nomination of the additional members
- (iii) 215th members were to be non-officials
- (iv) the Central Legislative Council could discuss the annual financial budget. could also address questions to the Government on matters of public interest
- (v) the number of the additional members in the provincial legislative councils could be between 8 and 20.

#### **The Indian Councils Act of 1909:**

- (i) the additional members of the Central Legislative Council were enlarged from 16 to 60 together with 9 members of the Governor General and his executive council, making it a total of 69 (37 officials and 32 non-official); of the 37 officials, 28 to be nominated. 9 officials, one Governor General, and 8 others of which 6 were to be the members of the Executive Council; of the 32 non-officials, 27 were to be elected non-official. 5 nominated non-officials: from 27 elected non-officials, there were to be 13 from general electorates. 12 from class electorate: 6 land holders and 6 Mohanmadans. 12 from special constituencies ,
- (ii) the number of the provincial legislative councils members were enlarged: Bengal 52, Madras 47, Bombay 47. United Provinces 47. East Bengal and Assam 41, Punjab 25, Burma 16: each of which were to be classified into elected, officials and non-officials.
- (iii) the members of the legislative council could ask questions. supplementary questions, discuss bills, move resolutions on financial statements but not of voting,
- (iv) any question could he disallowed without giving any reason.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

(v) franchise was restricted. and discriminatory based on property and income qualifications

(vi) ) Muslims had separate electorates and reservation of seats on religious grounds

(vii) Indians were appointed (K.G. Gupta and S.H. Bilgrami) on the Executive Council of the Governor-General.

#### **The Government of India Act, 1919;**

(i) the preamble promised. as had been enumerated in an earlier, August Declaration of 1917. a responsible government to be instituted as the ultimate goal of the British rule in India. to be granted through progressive realization

(ii) the powers of the Secretary of State were drastically reduced: only papers relating to foreign relations, military affairs, currency. etc were to be sent to him.

(ii) the number of members on the India Council was reduced (not more than 12 but not less than 8) half of them must have resided in India for at least 10 years,

(iii) the High Commissioner for India was to be appointed in England to look after trade and students' interests

(iv) civil and military government of India remained under the control of the Governor General-in-Council in which the position of the Governor General remained dominant.

(v) some Executive Council members were to be Indians now who held relatively less important folio,

(vi) The central legislature had two chambers. The Council of State (60 members: one President, 34 elected and 25 nominated; of the 34 elected, 20 were to be from general constituencies. 11 from communal. 10 Muslims, one sikh, and 3 from European Chambers of Commerce) and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the Legislative Assembly (143 members, 103 elected and 40 nominated, of the 40 nominated, 25, were to be officials, and 15 non-officials; of the 103 elected. 51 were to be from general constituencies. 32 from communal (30 Muslims. 2 Sikhs) constituencies and 20 from special (9 European. 7 landholders. 4 Indian commerce) constituencies;

(vii) the tenure of the Council was fixed at five years. and of the Assembly. three years:

(viii) in both houses, the franchise was based on property qualifications, and thus was restricted and discriminatory

(ix) the central legislature was empowered to make laws on the central list (47 subjects) while the provincial legislatures were authorized to make laws on the provincial list (51 subjects);

(x) the provincial subjects were further classified into reserved subjects under the British Councillors and transferred subjects, under the Indian ministers;

(xi) the partial responsible government known notoriously as dyarchy. came to be introduced in the British Indian provinces:

(xii) the strength of the provincial legislatures differed from province to province: maximum strength 140. and minimum 60. though Assam was an exception, with 53 members : roughly 70% of the members were to be elected. 20% nominated officials. and 10% as nominated non-officials.

#### **The Government of India Act, 1935:**

(i) the Act of 1935 was the lengthiest act with 451 clauses and fifteen schedules. proposing a federation for the British Indian provinces and the Indian princely states which federation never came into effect:

( ii) the provincial dyarchical system was withdrawn and its place was taken by the provincial autonomy:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iii) the division of subjects was made and three lists were devised : the federal list was to have 59 items, the provincial list was to have 54 items. and the concurrent list was to have 35 items. The federal list items were to be made laws by the central government, while the provincial list items were to be made laws by the provincial governments. while the concurrent list items were to be made laws by both the central and provincial legislatures, the central law was to prevail over the provincial law in case of the conflict: the residuary powers were put under the Governor General;

(iv) the Governor-General possessed autocratic powers under the garb of safeguards, and reservations, introducing the dyarchical system at the centre:

(v) the lower house i.e., the Legislative Assembly had 375 members and the Council of States had 260 members while six out of the eleven British India provinces had bicameral legislatures. Out of 260 members, the Council of States was a pennisant body with members chosen for nine years. one-third retiring every three years. 104 members were to be taken from the princely states and 156 from the British Indian provinces : Of 156.6 were to be nominated while 150 members were elected on communal basis : 75 Hindus. 49 Muslims, 4 Sikhs. 6 scheduled castes. 6 women. 7 Europeans. one Anglo-Indian. and 2 Indian Christians: of the 375 Assembly members. 125 were to represent the Indian princely states, and 250 members were to represent the British India : 105 general constituencies. 82 Muslims constituencies. Sikhs 6, Anglo-Indian 4, Europeans 8. Commerce and Industry 11.landholders 7 and the rest from other constituencies — the Assembly members were to be elected indirectly with a term of five years subject to dissolution earlier;

(vi) the federal court was empowered to decide the inter-state disputes as also the interpretation of the Act of 1935: the court had three judges including the chief justice;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(vii) the British Parliament remained supreme with regard to any and every law, concerning India;

(viii) the India Council was abolished. the job of India Council of advising the Secretary of State went over to a body consisting of members between three and six appointed by the Secretary of State himself;

(ix) The separate and communal electorate system was not only kept by the Act of 1935. but was also extended;

(x) Burma, later Myanmar was separated from India.

#### **The Indian Independence Act, 1947:**

Following the enactment of the Government of India Act. 1935 in 1937. the Indian National Congress attained power in seven provinces (with clear majority in five out of the eleven British India and the largest party in the three other provinces). The Congress ministers ruled perfectly well but with the beginning of the World War H. the Congress resigned in protest against the Governor General's decision to declare India as a bellieerent nation without consulting the Indian leaders, including the Indian National Congress. The Indian political deadlock between the British Government seeking India's support in the war and the Indian leaders asking for a promised independence after the war and the national government during the war remained unsolved. All governmental proposals with August Offer (1940) and the Cripps Mission Plan (1942) brought no solution while the Congress went though its Individual Satyagraha (1940) and the Quit India movement (1942). The end of hostilities in 1945 and the Labour Party victory in the English election after the war raised hopes of solution of the Indian political problem. The Cabinet Mission Plan of 1946 was accepted, but only at the cost of the Muslim League stubbornness. The Indian Independence Act gave India the independence, but with the partition of the country: the Constituent Assembly created by the 1946 Cabinet Mission Plan worked through two such assemblies: the Constituent Assembly of India and the Constituent Assembly of Pakistan.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

#### **I.1(c)(ii) The British Government Legacy:**

The British government's rule has left a legacy that still affects India today: some of it is good while some of it even bad. Though it is not possible to speculate India without the colonial rule, but it is certain that India would have been, today. entirely different.

The **present administrative system** in India. is a legacy of the British rule. The British government in India introduced a system of public administration which was meant to suit the needs of the mother country: maintenance of law and order, collection of revenues to meet its expenditure, retention of powers in the hands of the British civil servants, protection of the British imperialistic designs and territories: and yet the system of administration, in terms of organization and training, though not with regard to the developmental tasks. remains the same. The Central Secretariat. which manages the administration of the central government and its functioning can be traced to the days of 1843; the Indian Councils Act of 1861 introduced the portfolio system which, through changes from time to time. has come to our days; the British days of 'departments' changed into 'ministries' after independence. The present day state administration and local administration system owe their origin to the days of the British rule in India. Lord Ripon's resolution of 1882 is rightly described as the 'Magna Carta' of local government in India while the dyarchical system of 1919 had placed 'local government' under the 'Transferred' system. The 1870 financial decentralization measure was introduced by Lord Mayo for the provincial and local administration. The ChB Service set up by the British has remained, with changes. growing from time to time, till our times. Macaulay's committee of 1854 introduced the open competition system as the basis for the selection of the civil servants in India. The Aitcheson Commission of 1886 classified the civil services into imperial, provincial and subordinate services. Islington Commission of 1912 suggested the categorization of services into class I and class 11 while recommending the introduction of 25% reservation of superior posts for the Indians. The Montfort Report of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1918 recommended 33% of superior posts for the Indians. 1.5 percent to be increased annually while suggesting the holding of competitive examinations to be held simultaneously in India and England. The report created a series of All-India services, existing nine at that time. The Lee Commission of 1923-24 recommended 50% of superior posts for the Indians, and the establishment of public service commission, first of its kind was set up in 1926 with Sir Ross Barker as its chairman.

The **parliamentary system**, as adopted in independent India, is the legacy of the British government, either it prevailed in Britain or the Britishers introduced it in India as it suited them while administering us. The legislative councils created through the Charter Act of 1853 or the subsequent Legislative Councils Acts included the executive councillors as members of the legislative councils, a feature in all parliamentary systems in which members of the executives are members of the legislature. Likewise, the right of the legislators to ask questions, supplementary questions, discussion of legislative measures are devices of parliamentary control over the executive is a normal feature of parliamentary control over the executive as developed through the acts of 1861, 1892, 1909 and 1919 and the like, The British parliamentary system, it should be kept in mind, had been a major influence on our prospective parliamentary system. The present military organization in India owes its existence to the Britishers, and as such, it is another significant British legacy. The regimentation of the Indian army, (examples, the Gurkha, the Rajput, the Sikh and the like) have still been modeled on what the Britishers had introduced during their rule in India. With the British having gone, the Indian Army still follows the British organization, training and the fighting methods. Our legal and justice system follows those of the British. The rule of law, equality before law, judicial and police organization as these prevail in the country; owe their characteristics to the British. Macaulay's education system including universities and colleges of higher learning and the Western dress code at formal occasions, are universal in India. The British, indeed, deserve to be complimented for integrating all the ethnically, and culturally diverse

## Spardha Mithra coaching Centre

### Indian Polity and Governance

people into one nation: the English language has given us a common language; their laws have unified us. The colonial state itself was authoritarian and autocratic; the laws were few, but were largely harsh; the administration was oppressive and repressive; and the police and the civil servants had a large measure of authority and power. The deputy commissioner was the collector and the judge, combining the powers of the executive and the judiciary. The local government system was urban-oriented, without caring for the poor rural. The colonial legal system was, indeed, based on the concept of equality of all before law, and yet the courts favored the Europeans, particularly the British against the Indians. Civil liberties like the freedom of speech, association and of press were assured by the colonial rulers, and yet they were abused by them in the name of law and order when they resorted to mass arrests during the period of national movement. The representative system came to be introduced from 1909. and yet the franchise remained restrictive, limited and discriminatory: only three per cent of the Indians could vote after 1919, and the Government of India Act. 1919. The situation in India, after the 1914-18 war. disappointed the Indians who faced the mighty Britishers through non-violent methods of Mahatma Gandhi. In Gandhi. the Indians found a Messiah, and the Indian National Congress. its leader. Gandhi who made. through his non-cooperation movement — 1920-22, civil disobedience movement — 1930-34. and the Quit India movement — 1942 (with which Gandhi had disassociated himself later), the national movement as the Indian movement and the Indian National Congress as the mass Congress. The revolutionary idea of framing the Constitution by the Constituent Assembly elected by the widest possible franchise was first propounded by M.N. Roy in 1927 and later by Jawaharlal Nehru while the Congress included it in the election manifesto of 1937 elections to the provincial legislatures. The Britishers had agreed to accept the demand for the Constituent Assembly during the World War 11 in 1940. It was only in the 1946 Cabinet Mission Plan that the British Government agreed to institute the Constituent Assembly for India with 389 members. Way back. in 1924, Motilal Nehru had introduced and got

## Spardha Mithra coaching Centre

### Indian Polity and Governance

passed a resolution outlining the procedure for drafting and adopting a Constitution for India in the Central Legislative Assembly and then. in 1928. Nehru Committee (1928) prepared. as against Lord Birkenhead's challenge. a Nehru report, on the strength of the all-party conference of 1927, explicitly explaining a Constitution for India. On the last day of the year 1929, the Congress's resolution for purna swaraj was passed, asking the British Government to grant complete independence for India. The Constituent Assembly. as proposed by the Cabinet Mission Plan of 1946, was to prepare the Constitution for country.

**2. THE MAKING OF THE INDIAN CONSTITUTION** The Indian national movement was fully committed to, in free India. a polity based on the ideals of representative democracy and this perspective guided the framers of the Indian Constitution. Our struggle against British colonialism was based on the principles seeking civil liberties for the individual and this became the very philosophy and goal of our polity. From the beginning, the national movement sought democratic values for the individual. and these formed the very foundations of our political system which we established after independence. Throughout the period of our freedom movement, we fought for our rights. and this is what the framers of our Constitution assured us through the fundamental rights. Our struggle was represented through people of all faiths and all regions. and this is what is reflected in every article of our Constitution. Democracy and its very ideals, and ideas constituted the basis of our national movement. All the policies and resolutions of the Indian National Congress were publicly discussed and debated, and only thereafter were voted upon: rich and heated debates and open voting had been the methods of the Congress. Gandhi's resolution on the non-cooperative movement, for example, was initially voted against Gandhi with 1336 votes against his resolution and 884 votes in his favour. The election of Subhas Chandra Bose as the President of the Indian National

Congress in 1938 was against the wishes of Gandhi. and yet Bose's acceptance of Gandhi's leadership as the father of the nation reflects the



## Spardha Mithra coaching Centre

### Indian Polity and Governance

very political culture that was the bedrock of our struggle against British colonialism. Consensus, to some extent, was achieved and made the very basis of our democratic functioning. The liberal-democratic tradition nurtured by the Congress was made the goal of our Constitution after independence. The national movement provided the alternative culture of democracy and civil liberties, the majority rule and the right of the minorities as against the colonial culture of authoritarianism, bureaucratism and paternalism.

**2.1 The Constituent Assembly of India** The Cabinet Mission Plan (1946) proposed a Constituent Assembly to frame the Constitution for India. The assembly, 389 members, was to be elected to represent the British India (296) and the princely states (93). Out of 296 members, 292 were to be elected by the provincial legislatures while 4 members were to represent the chief commissioners' provinces. Ninety-three members were to be nominated by the rulers of the princely states. Following the partition of the country, the Constituent Assembly was bifurcated. As a result, the membership of the India's Constituent Assembly was reduced to 299: out of which 229 represented the British India provinces and 70. the princely states. The state-wise membership was:

The Constituent Assembly took almost three years (two years, eleven months and eighteen days to be precise) to complete its historic task of drafting the Constitution for independent India. During this period, it held eleven sessions covering a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution. Dr. Sachidanand was the first President of the Constituent Assembly when it

met on December 9, 1946 while later Dr. Rajendra Prasad was elected the President of the Assembly. The Draft Constitution had 315 articles and 8 schedules, while the Constitution, when adopted on November 26, 1949, had 395 articles, divided into 22 parts with 8 schedules. While 7635 proposals were made, only 2473 proposals were considered. The Constitution was enacted on January 26, 1950.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**2.1(a) The Constitution: Its Making:**

The Constitution-making body began its task with the Muslim League staying away. Nehru moved the eight point resolution on December 13, 1946 on which the Preamble and the Constitution came to be based. The Objectives Resolution (December 13, 1946), read as follows:

1. The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;
2. WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of India; and
3. WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
4. WHEREIN all powers and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
5. WHEREIN shall be guaranteed and secured to all the people of India justice, social, economic and political: equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

6. WHEREIN adequate safeguards shall be provided for minorities, backward and tribal area. and depressed and other backward classes: and

7. WHEREIN shall be maintained the integrity of the territory of the Republic and its sovereign rights on land. sea and air according to justice and the law of civilized nations; and

8. This ancient land attains its rightful and honoured place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of mankind.

As stated above, the resolution defined India as an "independent sovereign republic to be formed through a Union" of British India and Indian states in which all powers were to be derived from the people. The resolution, in clause 5. guaranteed and secured to all the people of India "Justice, social, economic and political: equality of status, opportunity, and before the law, freedom of thought. expression, belief, faith, worship. vocation. association and action subject to law and public morality". Clause 6 of the objectives stated "adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes."

The resolution made its liberal intentions more clear with its added stress on civil rights, though its sovereign intentions too laid extra emphasis on "social justice" with indications for the provisions of affirmative action against the unprivileged communities including the minorities. Though the resolution did not include specific references to "democracy" or "universal adult franchise", it does, in no case, mean that Nehru avoided them deliberately. Nor was the reason of their non-inclusion because of any controversy with regard to them. The fact was that the use of the "republic- was itself sufficient proof that independent India was to be a democratic state with adult franchise without any discrimination whatsoever. However, the word "democratic" was incorporated in February 1948 draft; and universal adult franchise found a place in

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Article 324 of the Constitution. The resolution did point out things which became nothing less than a controversy. The "federal" aspect is one such example. Clause 3 of the resolution clearly stated that the "Union" would consist of constituents such as British India and the states which "shall possess and retain the status of autonomous units, together with residual powers.... save and except such powers and functions as are vested in or assigned to the Union." The Objectives Resolution made the promise of bestowing the residuary powers on the units, i.e. all the rest of the powers which were not assigned to the Union. What happened was the reverse of what was stated in the Objectives Resolution. The sub-committee ultimately decided on July 5, 1947 that "the Constitution should be a federal structure with a strong centre where there would be three "exhaustive" legislative lists, "Union (97 items). State (66 items) and Concurrent (47 items)" with residuary powers for the "Centre". The term "secularism" did not figure in the Objectives Resolution. It came to be included in the forty-second amendment (1976) along with "socialist", though the Constitution did, through Articles 25 to 28, speak of freedom of religion, guaranteeing freedom of conscience and free profession, practice and propagation of religion with freedom to manage its religious affairs with no taxes from the state of which proceeds would be spent on any particular religion. The right to freedom of religion was, to a great extent, an indirect admission of secularism in India, or what Amartya Sen described as "secular in the political sense". However, despite the heated discussion on words relating to secularism, the liberal-individualist rights, including freedom of religion was restricted as Sumit Sarkar (Indian Democracy: The Historical Inheritance) in Atul Kohli (ed.), The Success of India's Democracy says "in the interests of maintaining the solidarity and discipline of religious communities...". The question of a strong centre weighed heavily. Despite some seeking to make concessions so as to win the Muslim League's cooperation to join the Indian Union by granting the residual powers to the units, it was ultimately shelved so as not to have the existence of perpetual or permanent minorities in the country, and with the Mountbatten partition plan of June 3, 1947, the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

matter lost all arguments even for purposes of discussion. India, as "the Union of States" in Article 1, was preferred to India as the federal country. The provision of the single citizenship in a country structurally federal was made with a view to imbibe the requirements of an integrated and unified nation for a society so segregated culturally, ethnically, linguistically and racially. The framers of the Constitution of India were not only to create India, they were to build it. The framing of a set of fundamental rights, as per the discussion of the sub-committee's report, did not face much of a debate while it finally decided to classify the justifiable rights under seven heads:

- (i) citizenship;
- (ii) equality (including the abolition of untouchability);
- (iii) freedom (including the right to life):
- (iv) religion;
- (v) cultural and education;
- (vi) miscellaneous (including the right to property); and
- (vii) Constitutional remedies.

As citizenship was to have a "space in the Constitution, right against exploitation came to be incorporated in the Constitution." At one point of time, the Minority Rights sub-committee insisted on a neutral and autonomous election commission to conduct free elections. Though the Advisory Committee too endorsed the formula and the Draft Constitution of February 1945 too provided in article 289 for a union and state election commissions, yet the Ambedkar proposal of June 15, 1949 proposed, finally, an integrated election commission, together with the regional commissioners, not working under the provisional governments. The provisions with regard to the directive principles were regarded as a golden compromise between the desires of the Congress to achieve "a social revolution" and the pressure of vested interest to keep intact the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

age-old social fabric. The social policy content was deliberately kept even, beyond the reach of the judiciary; "the due process of law" was intentionally rejected in favour of "the procedure established by law-.

India as 'the Union of States' was a clear indication of the trend towards centralization, though the composite character of the country was not ignored in the process. The legislative, executive and financial dominance of the centre in relation to the states was asserted clearly as against the provincial aspirations. The office of the President, according to the Union Constitution committee, was to represent both, the centre and the states, making the office of the Governor of a state to act as the agent of the centre, while granting the states right to be represented in the council of states, only on the strength of their relative population. while the justification of the second chamber in the states was never fully established clearly. With regard to the position of the Supreme Court as the highest judicial organ of the integrated judiciary, the Union Constitution Committee accepted the recommendations of the Adhoc Committee on Supreme Court that the Supreme Court would have:

- (i) the exclusive jurisdiction over the centre-units and the inter-unit disputes;
- (ii) ultimate jurisdiction on matters arising out of the union government's treaties with foreign states;
- (iii) concurrent jurisdiction with High Courts on disputes relating to the fundamental rights:
- (iv) appellate jurisdiction similar to that of the Privy Council; and
- (v) advisory jurisdiction, while, on Ayyar's resolution in the Constituent Assembly giving the high courts' powers to issue writs, as with the Supreme Court, on cases involving fundamental rights.

The Constituent Assembly debates relating to the discretionary powers of the Governor, according to Clause 9 of the Provincial Constitution

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Committee's report, suggested that the Governor would act in his discretion in matters such as:

- (i) prevention of any grave menace to the peace and tranquility of the province or any part thereof;
- (ii) the summoning and dissolving of the provincial legislature;
- (iii) the superintendence, direction and control of elections; and
- (iv) the appointment of the Chairman and the members of the Provincial State Commission and the Provincial Auditor General.

The Drafting Committee only replaced the word 'governor's discretion' by the word 'governor's pleasure.' The emergency powers of the Centre as exercised through the Parliament and the President of India were loaded in favour of the Union Government, reducing the states to the position of glorified municipalities, while keeping the liberties of the people at the mercy of the centre. The major reason behind this was the framers' (and Ambedkar's) concern for the country's integrity and stability in abnormal situations. Article 365 was, indeed, the last stroke on the state's autonomy empowering the President to declare "constitutional breakdown" in the event of states not complying with the directions of the centre. The comprehensively worded Constitution, with the least and the most important articles, some even temporary and transitional, forced the framers of the Constitution to devise the multi-method procedures of amendment. The result was an amendment every year and a half on an average.

The efforts of the Constituent Assembly to frame a Constitution for Independent India within a period of three years was indeed laudable. The framers were naturally to draw a lot, both from sources internal (for example, the Government of India Act, 1935) and external (numerous Constitutions of the world notably, the British, the American, the Irish, the Canadian and the like). They were also to accommodate pressures of numerous shades of opinions from within. The result was a "political" Constitution rather than a "social" one, a balance between, as Chaube

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(Constituent Assembly and the Vision of the Future) says. "the claims of stability and adaptability." Placed between. he continues, "its, own commitment to widespread socio-economic reforms, repeated though rather vaguely promised and the pressure of the propertied class, it upheld the claims of property and at the same time confirmed its promises for socio-economic reforms The Constitution. which ultimately came to the fore bore great omissions. significant mistakes of commission. complicating complaints. and overlapping provisions. And yet the work of framing the Constitution was of immense importance.

**2.1(b) : Sources of the Constitution:** The 1950 Constitution. it is often said. was the result of borrowings, both external as well as internal. Indeed. the framers of the Indian Constitution. were influenced by numerous Constitutions of the world. The major external sources were the British Constitution. for example, which did influence in matters such as:

- (a) First past the post principle;
- (b) Parliamentary form of government;
- (c) The idea of the rule of law;
- (d) Institution of the office of the Speaker of the Lok Sabha and his role: and
- (e) Law-making procedure.

From the Constitution of the United States of America were borrowed the ideas relating to :

- (a) The charter of Fundamental right;
- (b) The office of the chairman of the Council of States or the Vice-President: and
- (c) The idea of judicial review as well as the concept of independence of judiciary. The Constitution of the Irish Free State helped us evolve what is



## Spardha Mithra coaching Centre

### Indian Polity and Governance

contained in Part IV i.e.. the Directive Principles of State Policy. The concepts of liberty, equality and fraternity as are found in the Preamble of the Indian Constitution were inspired by the French Constitution.

The Canadian Constitution influenced the framers of the Indian Constitution in matters relating to:

(a) the quasi-federal form of government (i.e.. the cooperative type of federation); and

(b) the idea of residual powers. The Weimer Constitution of Germany influenced the framers of the Indian Constitution with regard to the emergency provisions contained in Articles 352 to 360.

The Constitution of Australia gave the framers of the Constitution of India the idea of the concurrent list and provisions relating to trade, commerce and the like. The former USSR (now Russia) gave the idea of incorporating the fundamental duties in the Constitution while the Union of South Africa (of 1910) provided the different methods of amending the Constitution. The internal sources of India's Constitution include numerous Acts the British Parliament passed for India. The portfolio system. assigning the departments to the ministers, goes back to the Indian Council. Act. 1861. The membership of the executive council as the one associated with the legislative councils is also of the British origins and is seen during all the acts passed from 1861 to 1935. the parliamentary procedures, from the stages of the passage of the bills to the ones when they become acts of the legislature. trace their origin to the British methods as adopted in India. The executive responsibility to the Parliament as has developed in India is associated with the British rule in India. The debt of our Constitution to the Government of India Act. 1935 has been profusely acknowledged by our framers, especially Dr. B.R. Amhedkar. Indeed, the Constituent Assembly has borrowed a lot from other Constitutions, as also from the Acts of the British Parliament passed for India. But this does not belittle our Constitution. Why should good ideals and ideas be the monopoly of any one? The framers of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Indian Constitution did not ape from others. What they found good. they took ideas that suited our conditions and circumstances: they took ideals that could guarantee us our promising future. The fathers of the Indian Constitution were guided by the philosophy of our Constitution which has been incorporated in our Objectives Resolution as stated earlier. and was later translated into our Preamble of the Constitution.

#### **2.1(c) : Preamble of the Constitution of India:**

The Constitution of India has a Preamble. It reads: WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR 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 of opportunity; and to promote among them all: FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSITUENT ASSEMBLY this twenty-sixth day of November 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION. The words 'socialist' 'secular'. and 'integrity' were added in the Preamble through 42nd Amendment of the Constitution in 1976. The Preamble, indeed, explains the intentions of the framers of the Constitution. Professor Ernest Barker rightly describes the Preamble as a keynote to the Constitution. Justice Madhokar had observed in Sajjan Singh v. The State of Rajasthan (1965) that the Preamble had the stamp of 'deep deliberations marked by precision' and that was why the framers had attached special significance to it. though at that point of time, the Supreme Court did not regard the Preamble as a part of the Constitution. Indeed, the Preamble did contain the sentiments expressed by Nehru's Objectives Resolution (December 1946). yet it was not until 1973 that the Supreme Court, in the Kesavananda Bharati case, reviewing its earlier observations, recognized the Preamble not merely a part, but an integral

## Spardha Mithra coaching Centre

### Indian Polity and Governance

part of the Constitution. Justice Jaganmohan Raddv observed in the above case: "It is an admitted fact.... That the Preamble of a statute is a key to open the minds of the makers as to the mischiefs which are to be remedied it is properly resorted to where there are doubts and ambiguities upon the words of the enacting part\_\_ The Preamble can never be resorted to, to enlarge the powers confined to the general government. We have the strongest of assurance that this Preamble was\_ but a solemn promulgation of a fundamental fact, vital to the character and the operation of the government'. Justice Shelat and Justice Grover had. then said, ....The Preamble to the Constitution of India embodies the great purposes. objectives and the policy underlying, its way into existence, i.e. a sovereign democratic republic the Constitution makers gave to the Preamble the pride of place. It embodied in a solemn form all the ideals and aspirations for which the country had struggled during the British regime and a Constitution was sought to be enacted in accordance with the genius of the Indian people. The Preamble was to embody in a very few and well-defined words the key to the understanding of the Constitution." The former chief Justice of India, M. Hidayatullah points out: "It (the Preamble) is the soul of our Constitution which lays down the pattern of our political society which it states is a sovereign democratic republic." The Preamble though adopted by the Constituent Assembly is important in so far as it states the source of authority. It says "we the people of India.. ... do hereby adopt, enact and give to ourselves this Constitution." It is also important in so far as it states as to when the Constitution was adopted: the adoption date was November 26, 1949. As to the date on which the Constitution was enacted, it was done on January 26, 1950 which is celebrated as our Republic Day. It was a day when twenty years earlier (i.e. January 26, 1930). the Indians through the Indian National Congress had celebrated their unilateral independence. The Preamble is significant in numerous other ways. It stated: (a) the nature of polity the Indians were to adopt, and (b) the objectives towards which the Constitution was to move ahead.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Nature of Polity The Preamble refers to the nature of polity to be adopted by the Constitution. The polity is described as:

- (i) Sovereign,
- (ii) Socialist.
- (iii) Secular. were incorporated in 1976 through the 42nd amendment of the Constitution],
- (iv) Democratic, and
- (v) Republic.

A discussion of each of these concepts seems both necessary and pertinent.

**(i) Sovereign:** The Preamble of the Indian Constitution says that India is a sovereign nation; it is sovereign in the sense that it is independent of any external power, 'sovereign' signifying 'independence' in its relations to other nations (See Schwarzenberger, International Law). There is also the internal aspect of sovereignty which means supremacy of the government over all individuals and institutions within its territory, supreme in so far as it possesses the power to make laws as defined by the Constitution. The concept 'sovereign', in the context of the Preamble and our polity implies a government which is independent of any external control, notwithstanding our membership of any international institution (United Nations, the British Commonwealth, any UN specialized agency etc.), and also a government internally supreme within the provisions of the Constitution.

**(ii) Socialist:** The 42nd amendment (1976) adds the word 'socialist' along with 'sovereign', declaring the intentions of the Constitution to bring about socialism. The concept 'socialist' in the Preamble is related to, as D.D. Basu opines, social justice. i.e., ending poverty, ignorance and inequality of opportunity (See Excel Wear v. Union of India, 1979). The

## Spardha Mithra coaching Centre

### Indian Polity and Governance

ideas used while the amendment was being introduced were: "The question of amending the Constitution for removing the difficulties which had arisen in achieving the objectives of the socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity ...." Indeed, the Indian type of socialism was not that of Marx—social ownership of all means of production and distribution; it was, as per the A% adi session of the Congress (1954), the Nehruvian socialistic pattern of society, notwithstanding Mrs. Indira Gandhi's propagandistic 'Garibi Hatao' slogan. The Supreme Court itself made the term 'socialist' clear in D.S. Nakara v. Union of India (1983).

#### **Justice D.A. Desai observed:**

"The principal aim of a socialist is to eliminate inequality in income and status and standards of life.

- The basic feature of socialism is to provide a decent standard of living to the working class, and especially provide security from cradle to the grave. Ordinarily, a socialist aims at providing for free education from primary to Ph.O.,
- But this does not mean that an ill-equipped person would be left unemployed and given no right to education. He shall also be assured a decent standard of life, and exploitation in any form shall be eschewed." Our concept of 'socialism' is a blend of Marxism and Gandhism, leaning heavily towards, Gandhian Socialism. Following the new economic policy since 1990s, all emphasis on 'socialism' efforts have taken a backseat.

(iii) **Secularism:** The term 'secular' was added along with the term 'socialist' through 42'd amendment (1976) in the Preamble. Explaining the term, the statement of objects and reasons stated: "To spell out the high ideas of socialism, secularism and the integrity of the nation," it is necessary to give these terms a real meaning so as to enable these to "promote public good." Justice Desai explained the meaning of the word 'secular' in the case of Ziyauddin Burhamuddin Bukharivs v. Brijmohan Ram Dass Mehara and Bros.: "The secular state, rising above all

## Spardha Mithra coaching Centre

### Indian Polity and Governance

differences of religion, attempts to secure the good of all its citizens irrespective of their religious beliefs and practices. It is neutral or impartial in extending its benefits to the citizens of all castes and creeds.- In S.R. Bommai v. Union of India - 1994. Supreme Court held the view that secularism is the basic feature of the Constitution. Indeed, the term 'secular' as Justice Gajendrajadkar had also said. means equality of rights to all the citizens with their religions completely irrelevant to that matter. In his words: "The State does not owe loyalty to any of the particular religion as such; it gives equal freedom to all religions." Secularism, in the Indian context, means, the right of citizens to follow an religion, separation of politics and religion, equal respect for all the religions by the state and the state's neutrality in respect of religions. In the case of St. Xavier 's College Society v. The State of Gujarat (1975). the Supreme Court admitted that though

the Constitution does not use the word 'the secular state', yet it does not mean that the framers of the Constitution did not want to establish such a state. In yet another case, T.M.A. Pai Foundation v. The State of Karnataka (2002), it was held: "Although the idea of secularism may have been borrowed in the Indian Constitution from the West, it has adopted its own unique brand of secularism based on its particular history and exigencies which are far removed in many ways from secularism in other countries." The Indian Constitution does not, unlike the United States, subscribe to the principles of non-interference of the State in religious organizations, but it remains secular as it strives to respect all religions equally; the equality being understood in its substantive sense. (See Aruna Roy v. Union of India. 2003).

**(iv) Democratic:** The word 'democratic', though not used in the Objectives Resolution, was used in the Preamble so as to assert people's sovereignty. The term implies:

(a) universal adult franchise,

(b) free and fair elections.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (c) periodic elections,
- (d) accountability.
- (e) elections at all levels of governance, and
- (f) equal participation of all in the polity.

In the Kesavananda Bharati case; Justice Mathew had observed: "The concept of democracy as visualized by the Constitution presupposes the representation of the people in the Parliament and the State Legislatures by the method of election... it is obvious that the powers must be lodged somewhere to judge the validity of the election, for otherwise, there would be no certainty as to who were legitimately chosen as members, and any intruder or usurper might claim a seat, and thus trample upon the privileges and liberties of the people."

**(v) Republic:** The use of the word 'republic' in the Preamble signifies on the one hand, a government in which the people or community as a whole wields power, and on the other, a polity opposed to the rule of any hereditary monarchy. The word "republic" in the Indian context means that the head of the state. i.e., the President of India, is not a hereditary one and that any citizen can aspire to be the first citizen of the country.

**Objectives of the Constitution** The objectives, as stated in the Preamble are: Justice; social. economic and political: Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all; Fraternity assuring the dignity of the individual and unity and integrity of the Nation.

**Justice:** Justice is one of the ideals which is to be sought. It is justice in the social sense which implies absence of all distinctions—to be treated as an equal member of society irrespective of caste. creed, colour, region, sex, language or any of these. It is also justice in the economic sense which implies absence of economic exploitation. none to be so poor that he sells himself off. and none to be so rich that he has the power over the lives of others; it is sufficiency for all before there is superfluity for the few—absence of economic disparities. employment for all, satisfaction of the basic needs of each and all.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(a) It is justice in the political sense which implies a democratic society with franchise for all, it is equal participation of all in the affairs of the government with rights, liberties and freedoms assured to every member of society.

(b) Liberty: Liberty, as an ideal, implies liberty of thought, permitting everyone to hold his/her definite opinions. Liberty of expression is the next step to the liberty of thought and opinion: what is an opinion unless it is not expressed? Both, the liberty of thought and of expression are essential conditions of a democratic functioning. If democracy is a form of government in which everyone has a say, it is, then, natural that all should have equal right to express themselves. The Constitution of India, through the Preamble, refers to freedom of religion, i.e., everyone is free to have his/her religious beliefs, his/her faith, as also the ways and the means through which they worship. This freedom of religion has been guaranteed through one of the fundamental rights as enshrined in Articles 25 to 28 of the Constitution.

**(c) Equality:**

**The ideal of equality is related to:**

(a) equality of status, and

(b) equality of opportunity. Equality of status implies that as members of society, all enjoy the same status and society does not admit any distinction, nor does it bestow any privilege on some at the cost of the others. Equality of opportunity implies that opportunities would be available to all equally. Equal opportunities are likely to ensure equal benefits in which no one is preferred to another.

(c) The incorporation of equality in the Preamble is a type of equality which is one that has been clearly qualified. It is equality in relation to liberty on the one hand and in relation to justice on the other,

(d) Fraternity: There is the ideal of fraternity incorporated in the Preamble. The word 'integrity' was added through 42nd amendment of the



## Spardha Mithra coaching Centre

### Indian Polity and Governance

Constitution in 1976. The Supreme Court of India in its decision in the case of Raghunath Rao v. Union of India (1993) explains 'fraternity' to mean a sense of common brotherhood of all the Indians: a common citizenship. India, being a land of diversities. may be threatened by disruptive and divisive forces. and lest it becomes a prey to such tendencies, the emphasis is laid on the unity and integrity of the nation while assuring. each individual his/her dignity. The importance of the Preamble can hardly be denied. It is, in fact, a key to the Constitution. to its understanding embody-ing not only the intentions and aspirations of the framers of the Constitution. but also the ideals for which the Constitution has been created. Some significant aspects of the Preamble do not go without notice. Firstly, the Preamble refers to the people of India having resolved to constitute India into a definite type of polity. The word 'people' denotes all the people of India which means that no particular section of the Indian people can ever possibly opt out of the Constitution by disowning it. The Union of India is not a federation in the sense that it is the product of agreement among the various states. It may be noted that 'the people' and not 'the states' have made, adopted and enacted the Constitution and that is why that the states can never think of seceding from the Union; the unity and the integrity of the nation are not the ones which are to be questioned. Secondly, the Preamble seeks to repeat much that is clearly obvious, especially if one ponders over the words stating India's nature of polity. The words 'sovereign'. 'democratic' and 'republic duplicate, if not triplicate things. The word 'sovereign' does include the will of the people, democratically structured. The word 'republic' too denotes elements of democracy. What makes these words clear is the fact that independent India would have a democratic polity. The insertion of 'socialist', 'secular'. 'integrity' through the 42nd amendment of 1976, and at a time of emergency. was formal rather than real, propagandistic rather than substantive: 'socialism' has gone into disfavor since the 1990s and we have not become more secular by inserting the word secular in the Preamble. Thirdly, the Preamble constitutes a wish list; ideals full of promises and the path likely to be

## Spardha Mithra coaching Centre

### Indian Polity and Governance

followed by the future governments. Indeed, it makes certain concepts clear in what they include, i.e. justice as social, economic and political; liberty as of thought and of expression; equality of status and of opportunity. But these are what is the minimum expected of any government worth its name must have them. Then, there are other terms such as 'unity' and 'integrity' the ideals which are on-going ones, impracticable at times. The most minimums and the most maximums have been sought to be combined in the Preamble. Fourthly, the Preamble has been hailed as an integral part of the Constitution: integral to the understanding of the Constitution, and integral to clarify the ambiguities if and when they arise. It is the Preamble, which is the repository of what the framers had in mind. The intentions of the framers can be known through the interpretations made by the courts, possibly by the judges. The Preamble, therefore, is the only reference on which the interpretation depends.

**Amendment of the Preamble** The question whether the Preamble of the Constitution can be amended under Article 368 of the Constitution arose for the first time in 1973 in *Keshavananda Bharati v. State of Kerala* case. The petitioner contended that since the Preamble was not a part of the Constitution, the amending power in Article 368 cannot be used to destroy or damage the basic features mentioned in the Preamble. The Supreme Court, however, held that the Preamble was a part of the Constitution and the *Berubari* Opinion in this regard was wrong. The Supreme Court, now, held that the Preamble can be amended subject to the condition that the 'basic features' in the Preamble cannot be amended. The court contended that if any of the basic elements mentioned in the Preamble is removed, the structure will not survive. The Preamble declares that the people of India resolved to constitute their country into a sovereign, socialist, secular, democratic republic. The amending power does not confer powers on the Parliament to take away any of these fundamental and basic characteristics of the polity, including the preamble.

2.1(d) **Salient Features of the Constitution of India:** India is located in Southern Asia, bordering the Arabian Sea in the west and the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Bay of Bengal in the east. with the Indian Ocean in the south. and the great Himalayas in the north. Its neighboring countries are Pakistan, Nepal. Bhutan, China. Bangladesh. Myanmar, Sri Lanka and Maldives. Its total area is 3,287,263 sq. km. or 1.269219 sq miles land, about 2.971190 sq km and water. about 314.400 sq km. It has a coastline of about 7000 km. Its population as in 2012 stood at 1205073612 CIA World factbook. The age structure is: 0-14 years, 29.7%; 15-64 years, 64.9%; 65 years and above 5.5%. The percentage of various religious groups are: Hindus. 80.44%; Muslims 13.42, Christians. 2.3%: Sikhs 1.90/0; others 1.8%; unspecified 0.1%. Literacy stands at 74.04% (2011 j; and life expectancy at 69.2 years (WHO Report 2011). Hindi is the official language, though the Constitution recognizes a total of 22 languages. India is a federal republic with 28 States and 7 Union Territories: suffrage is universal at 18 years of age and above. India had adopted a parliamentary system with executive of two types (President as constitutional and nominal head and Prime Minister as the head of the government together with the Council of Ministers as the real head). The Parliament is bicameral with the House of the People (545 members at present) and the Council of States (total 250 members). The Supreme Court is the highest judicial body. The Indian Constitution is unique in many respects.

#### **Its major features are:**

(i) It is the lengthiest Constitution. The 1950 Constitution had 395 Articles and 8 Schedules. Now with amendments, as till January, 2012 there have been 97 amendments and with four new schedules have made the Constitution really very lengthy. Numerous factors have helped the Indian Constitution to be the lengthiest one: a considerable number of amendments deleting some 20 articles and adding another 70. Three parts IVA, IXA, XIVA and four schedules 9, 10, 11, 12 have been added. The inordinate length of the Indian Constitution is in part due to its own character. The federal Constitution, as the Indian Constitution is, is relatively longer.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

It contains the Constitution of the States as well: 86 Articles in Part VI relate to the form of a standard Constitution meant for the States and the Union Territories. The numerous provisions relating to problems peculiar to India have tended to enlarge the size of her Constitution. As many as 16 Articles have been devoted to the services under the Union and the States. 9 to the official language, 9 to emergency provisions, 13 to special classes such as the Scheduled Castes, the Scheduled Tribes. (Part XIV, 308-323; Part XVII, 343-351; XVIII, 352-360; XIV 330-342). The Constitution also has a chapter on 'Elections', another on 'Miscellaneous Provisions', and a third on 'Temporary and Transitional provisions'. According to M.V. Pylee, "Almost three-fourths of the Constitution is covered by the items mentioned above and that explains the size of the Constitution." In relation to other constitutions, the Constitution of India is lengthier. The US Constitution has seven Articles, the Chinese one has 138 Articles, the present French Constitution has 92 Articles, and the German Constitution has 146 Articles while the Constitution of South Africa has 243 Articles.

(ii) The Constitution of India, in its method of amendment. is partly flexible and partly rigid. Some provisions of the Constitution of India can be amended through simple majority of the two Houses of Parliament (articles relating to citizenship, scheduled castes and scheduled tribes, etc.); and other provisions of the Constitution (under Article 368) can be amended by 2/3rd majority of the members present and voting in each House of the Parliament which should include the simple majority of the total House followed by the approval of one-half of the States (articles relating to the election of the President, powers of the Union: and of the States, jurisdiction of the Supreme Court and High Courts: Article 368 itself etc.). Some other provisions of the Constitution can be amended through the two-third majority of the members present and voting in each House of the Parliament (most of the Constitution is amended by this procedure). The amending method question was probably the least debated and the least controversial, B.N. Rau, at one point of time. suggested a two-fold procedure: the most important provisions to be

## Spardha Mithra coaching Centre

### Indian Polity and Governance

amended through two-third majority in each House of Parliament and to be ratified by a similar majority of the provincial legislatures, while the least important provisions to be amended by a simple majority in Parliament. After having deliberated on the amending procedure as followed in the American, the Australian, and the Irish Constitutions, the Constituent Assembly agreed to the three-fold methods as stated above. Professor K.C. Where appreciated the amending procedure of India which, according to him, was a blend of rigidity (in so far as the rights of the States were concerned) and flexibility (relatively far less important provisions). With regard to the number of amendments made in the Constitution, the position is over one and a half amendment per year on an average (till 2012, there had been 97 amendments in our Constitution). Though the relatively numerous amendments have not disfigured the Constitution, many of them were devoted to procedural and transitional provisions. And yet, no amendment can be so made that violates the basic structure of our Constitution (See *Minerva Mills v. Union of India*, 1981)

(iii) The Federal system with strong centralizing trends constitutes another feature of the Indian Constitution. Some pointing at 75 per cent unitary and 25 per cent federal. The system in India is described not as a federal state with unitary features, but a unitary state with federal features. India is not called a federation, but "a Union of States" (Article 1 of the Constitution), India is rightly described as federal in form, but unitary in spirit. What it means is that structurally the

#### **Constitution provides a federal system:**

- (a) a written constitution specifying the structure of government at the Centre as well as in the States;
- (b) a rigid constitution in so far as amenability requires the concurrence of the States;
- (c) distribution of powers with Union List (97 subjects; the Union government has the power to make laws over them). State List (66

## Spardha Mithra coaching Centre

### Indian Polity and Governance

subjects: the States' governments possess the right to make laws over them), and Concurrent List (47 subjects; both the Centre and the States governments have the power to make laws);

(d) power of the Supreme Court to settle disputes where the Centre or any State is a party. or disputes between the Centre and the States; and

(e) the bicameral legislature at the Centre. with the Council of States representing the States. And yet, the centralizing features make the Centre more powerful than the States. Distribution of powers favors the Centre. The Center plays a dominant role in the amendment of the Constitution. Single citizenship, integrated singular judiciary. uniformity in matters relating to administration, the dependence of States on Centre's financial aid—all these make the Union government more powerful than the States. In *The State of West Bengal v. Union of India* (1963) the Supreme Court held that India is not a truly federal.

(iv) India has a parliamentary system of government both, at the Centre and in the States. The President of the Indian Union and the Governors in the States are constitutional rulers with nominal powers. They act on the advice of their respective cabinets which wield the real executive authority in the Union or in the States as the case may be. Besides, as is essential in a parliamentary system of government, that the executive is drawn (both at the Centre and in the States) from the legislature itself and depends for its existence upon the confidence that the legislature has in it. The ultimate legislative and executive control is vested in the popular house which is elected on the basis of adult suffrage. There are also provisions for resolving differences between the Houses by joint sessions. Thus, the makers of the Constitution have followed the British model in setting up the governmental machinery at the Centre as well as in the States. (See Articles 74 and 75 of the Constitution). To adopt a parliamentary system in India was a fact with which the Indian leadership was already attuned with, from the days of the liberation struggle. The Nehru Committee report. the Sapura report. and the Draft Constitution as published by the socialists and the Hindu Mahasabha

## Spardha Mithra coaching Centre

### Indian Polity and Governance

leaders had all argued in favour of parliamentary system. Explaining the rationale in choosing parliamentary system. Nehru had stated in the Lok Sabha on March 28, 1957. "We chose the system of parliamentary democracy deliberately; we chose it not only because, to some extent, we had always thought on those lines previously. but because we thought it in keeping with our own old traditions; not the old traditions as they were, but adjusted to the new conditions and new surroundings.

We chose it let us give credit where the credit is due because we approved of its functioning in other countries. more especially in the United Kingdom." However. the Westminster model adopted in India is not completely that of the United Kingdom. The President of India does not reign as does the British head of the state; he/she alone decides as to who would rule when the possibilities of making the government are remote. He/She alone preserves, protects and defends the Constitution (Article 60 of the Constitution). Integrated and relatively powerful judiciary is yet another feature of the Constitution of India. The Supreme Court is the custodian of the Constitution. of the federal system. and of the rights of the people. It is the highest court in the sense that it exercises supervisory and appellate jurisdiction over the courts below it. It interprets both the Constitution as well as the law. Though the Supreme Court of India is not as powerful as the American Supreme Court. but it does have jurisdiction of giving advisory opinion; a power not exercised even by the Supreme Court in the United States. The role of the Supreme Court of India in evolving the concept of basic structure of the Constitution as a domain outside the power of the parliament has been, indeed. asserted many a times. Through successive reviews, the Supreme Court has, in the Kesavananda Bharati case, finally been able to highlight the essence of the Constitution. The judicial review power of judiciary is the power through which any law contrary to the Constitution can be declared unconstitutional. It is through this power that the Supreme Court is described as the final interpreter of the Constitution. The courts have exercised this power judiciously. Judicial activism is the finest aspect of the Indian judiciary. (vi) Secularism is one of the distinctive features of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the Indian Constitution. India, as a secular state, does not profess any religion, nor does it discriminate against any. It also does not allow its authority to be used for the propagation of any religion or creed. Even in the formulation of its policies, it is not guided by any religious principles. It is mainly concerned with the social, economic and political welfare of the people, leaving the religious matters to the individual as his or her personal ones. In the words of K.M. Panikkar, "In the composite secular state of India, the political institutions are based on the economic and social interests of the entire Community, without reference to religion, race or sect. All enjoy equal rights, but no privileges ... All communities share the power as they share the duties and responsibilities of being a citizen." Further, in the secular state of India, all religions are treated alike. Freedom of conscience and free profession, practice and propagation of the religion are guaranteed; and every office from the highest to the lowest is open to the members of every community. Equal care is taken to see that there is no discrimination against any linguistic section in the country. It has also been provided that in the secular state of India no person can be compelled to pay any tax so to help promote any religion; nor any religious instructions be imparted in educational institutions maintained wholly or partly out of state funds. However, the religious denominations have been given the right to establish and maintain institutions for religious and charitable purposes. A secular state is not necessarily a godless state. The Indian Constitution has recognized the relationship of man with God. The President of India and other dignitaries have to take an oath, when they have to either swear in the name of God or make a solemn affirmation. (vii) The Preamble of the Constitution clearly proclaims the sovereignty of the people of India. It lays down: "We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic re-public...". Further, the people have, as is clear from the Preamble, themselves adopted and enacted the Constitution. The people are, thus, the ultimate masters under the Constitution. If the Constitution is to be amended, the Parliament under Article 368 has the power to do so. If it is to be repealed



## Spardha Mithra coaching Centre

### Indian Polity and Governance

or reframed, only the people of India as sovereign can do so. Every five years, the people of India get an opportunity of affirming their views and putting in power a party that is liked by them. Thus, the ultimate seat of power is the people of India. In *Gopalan v. State of Madras*, Justice Shastri had observed: "There can be no doubt that the people of India, in exercise of their sovereign will as expressed in the Preamble, ad-adopted the democratic ideal which assures to the citizen the dignity of the individual and other cherished human values as a means to the full evolution and expression of his personality, and in delegating to the Legislature, the Executive and the Judiciary, their respective powers in the Constitution, reserved to themselves certain fundamental rights...."

(viii) The Indian Constitution has introduced the principle of universal adult suffrage and has abolished the old system of communal electorates. Now every person, man or woman, of eighteen years of age or above has the right to vote in the elections to the House of the People and the State Legislative Assembly. The provisions of the Constitution have been hailed as the 'fountain-spring of India's democracy'. for it has swept away at one stroke all antiquated and undemocratic qualifications prescribed to be eligible for voting. Under the Government of India Act 1935, about fifteen per cent of India's population had the right to vote. Now, in free India every citizen of 18 or above is entitled to this elementary right of citizenship. Besides, the abolition of communal electorates has gone a long way in burying the ghost of communalism. The citizens of India now vote as individuals and not as Hindus, Muslims or Christians.

(ix) The Indian Constitution in its Part III embodied a set of fundamental rights and in Part IV A, a set of fundamental duties (The fundamental duties were inserted through 42nd amendment of 1976). The fundamental rights include right to equality (Articles 14,15,16,17 and 18), to freedom (Articles 19 to 22), against exploitation (Articles 23, 24) to freedom of religion (Articles 25, 26.27 and 28), to cultural and educational rights (Articles 29, 30) and right to constitutional remedies (Article 32), Property right which was a fundamental right until 44th

## Spardha Mithra coaching Centre

### Indian Polity and Governance

amendment (1978) is now an ordinary right. The Supreme Court, through writs such as habeas corpus, mandamus, prohibition, certiorari, and quo warranto, protects the fundamental rights of the people. The fundamental rights are not absolute and can be enjoyed within reasonable limitations. The fundamental duties, under Article 51A, include duties such as abiding the Constitution and respecting the ideals and institutions like the National Flag and the National Anthem; cherishing the noble ideals of national struggle for freedom; upholding and protecting the sovereignty, unity and integrity of India; defending the country; promoting harmony and the spirit of common brotherhood; preserving the composite culture; protecting natural environment; respecting women; developing scientific temper; safeguarding public property and abjuring violence and the like. The Swaran Singh Committee had recommended these duties earlier in 1976.

(x) The Constitution, under Part IV (Articles 36 to 51), mentions directive principles of state policy which constitute another feature of our polity. These directive principles of state policy, though not justiciable, have been regarded as fundamental in the governance of the country. They serve as a national manifesto in the sense that the governments in India would strive to implement them. They include principles such as socialist, Gandhian and liberal. They lay down emphatically that the State would ensure for its people adequate means of livelihood, fair distribution of wealth, equal pay for equal work, protection of child and adult labour, employment, and free and compulsory education for children upto the age of fourteen. They also provide that the State shall make effective provisions for public assistance in the event of unemployment, old age, sickness, disability and other cases of want, a living wage, conditions of work, assuring a decent standard of life, full enjoyment of leisure, and social and cultural opportunities and raising the level of nutrition as also of health. This part of the Constitution, i.e. directive principles, constitute state's explicit idea of affirmative action. In addition to this, the Directive Principles lay great emphasis on the promotion of educational and economic interests of the weaker sections of the people, especially of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Scheduled Castes and Tribes. They also enjoin that the country's foreign policy would promote international peace and security. The general tendency of these directives is obviously to introduce a wide measure of socialism in the economic sphere. to provide social security and better standards of living and care for all, to emphasize the duty towards women and children and the obligations towards backward and tribal classes. If all these principles are carried out, wrote M.C. Chagla, "Our country would indeed be a heaven on earth. India would then be not only a democracy in the political sense, but also a welfare state looking after the welfare of the citizens—a state in which there will be economic equality between its different citizens and in which everyone would have the same opportunity to educate oneself, to work and to reap the reward of one's labour."

(xi) There are numerous other features of the Constitution as well. Single citizenship, single judiciary, special assistance to the weaker sections of society, etc. are such other features of the Constitution. Of late, **basic structure of the Constitution** assures that the governments would not deface the Constitution. The courts, through what is called judicial activism, have indicated a domain out of the reach for the Parliament. These include: republican and democratic form of government, federal character of the Constitution, supremacy of the Constitution, parliamentary democracy, secularism, and rule of law.

(xii) **Single Citizenship** is yet another feature of our Constitution. What it means is that despite the federal structure of our polity, the framers of our Constitution chose to adopt singular citizenship, and that it is the citizenship of the country, and not of any state we may reside.

(xiii) The Constitution makes special **provisions for the minorities** which includes the protection and promotion of the interest, and culture of the minorities. In addition to it, the Constitution grants special facilities to the weaker sections of society, in particular the Scheduled Castes, the Scheduled Tribes, women and the other backward classes.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(xiv) **Panchayati Raj** is yet another distinctive feature of the Indian Constitution. The **rural-urban** local institutions have been granted **Constitutional status** through amendments 73rd and 74th. Now such local institutions do not exist on the whims of the governments of the States or the Centre.

(xv) The **changing character of the administration** is yet another feature of our Constitution. Ours' is a committed bureaucracy, committed in the sense it is committed to perform the developmental tasks attuned to the welfare system — from public officialdom of the days of the British Raj to those devoted to public service.

(xvi) The concept of **Rule of Law**, as a feature of India's Constitution, has been borrowed from Britain. This concept implies that no man is above law and that all individuals are subject to the jurisdiction of the ordinary courts. There are basically three postulates of Rule of Law. Related to this feature is the feature that the Constitution of India has a peculiar combination of constitutional supremacy, as it obtains, in the USA and the parliamentary sovereignty as it obtains in the United Kingdom. To conclude one must state the **supremacy of Constitution** as the most distinctive feature of our Constitution, one on which is built our political edifice, our polity: also one around which revolves our governmental machinery.

The substantive and procedural achievements of the Constitution of India can be clearly noticed. The **substantive achievements**, as Rajiv Bhargava (Politics and Ethics of the Indian Constitution) notes, have been:

- (a) universal suffrage in the face of ineliminable traditional hierarchies;
- (b) liberal individualism committed to civil liberties in a context filled up with communitarian values indifferent to individual autonomy;
- (c) a commitment to group rights, especially related to cultural minorities;

Spardha Mithra coaching Centre  
Indian Polity and Governance

(d) caste-based affirmative action programme provided to the depressed and

(e) asymmetrical federalism by introducing special provisions for Jammu and Kashmir and the North-eastern states.

The **procedural achievements** of the Constitution, as Bhargava indicates, have been:-

(a) faith in political deliberation.

(b) the spirit of compromise and accommodation, and

(c) consensually reached decisions.

The major **drawbacks** of the Constitution, as indicated by Bhargava, are:

(i) the Constitution has been unwieldy, in so far as it contains every thing under the sky;

(ii) it has been unrepresentative, in so far its organization was structured in the most unrepresentative way;

(iii) It has been ambiguous, in so far as it lacked clarity on numerous articles; and

(iv) it has been an alien document for it was ordered by a Constituent Assembly established by the British government.

**2.1 (e) Parts and Important Articles of the Constitution:** Originally the Constitution comprised of 22 parts. However with the deletion of Part VII in 1956 the parts of the Constitution were reduced to 21. Subsequently three parts were added to the Constitution viz. Part IV A in 1976; Part DC A in 1992; and part XIV A in 1976. Thus at present the Constitution of India comprises of 22 parts with one deletion (Part VII) and three additions: Part, IV A, IX A, and XIV A.

**Part I (1-4)** comprises Articles 1-4 and deals with the territory of India, admission or establishment of new states, formation of new states and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

alteration of areas, boundaries or names of existing states. **Part II (5-11)** comprising Articles 5-11 deals with citizenship at the commencement of the Constitution, 'rights of citizenship of certain persons who migrated to India from Pakistan,' rights of citizenship of certain migrants to Pakistan, rights of citizenship of persons of Indian origin residing outside India, persons voluntarily acquiring

citizenship of a foreign state, continuance of rights of citizenship and the right of parliament to regulate the rights of citizenship by law. **Part III (12-35)** covers Articles 12-35 and deals with the Fundamental Rights of Indian citizens. Articles 14-18 deal with the right to equality. Article 19 deals with six freedoms of Indian citizens, namely,

- (1) freedom of speech and expression;
- (2) freedom of assembly;
- (3) freedom of association;
- (4) freedom of movement throughout the territory of India;
- (5) freedom of residence and settlement in any part of India; and

(6) freedom of occupation. Articles 20-22 spell out protection to all persons in respect of conviction, prosecution and rights available to them in this regard. Articles 23-24 deal with the right against exploitation and prohibit traffic in human beings, forced labour, employment of children below 14 years in factories, mines and other hazardous jobs. Articles 25-28 deal with the right to freedom of religion. Articles 29-30 deal with cultural and educational rights and afford protection to the minorities. Article 31 dealing with the right to property was deleted by the Forty-fourth Amendment. Article 32 provides for the right to constitutional remedies to citizens, while other Articles are general. Part IV (36-51) covering Articles 36-51, deals with the Directive Principles of State Policy which aim at establishing social and economic democracy in the country. **Part IV-A (51A)** contains only Article 51 A, which was added by the Forty-second amendment in 1976. It outlines the duties of the citizens of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

India. **Part V(52-151)** deals with the government at the union level. Articles 52-73 deal with the President and the Vice-President of India. Articles 74-75 deal with the council of ministers and the Prime Minister of India. Article 76 relates to the Attorney General of India. Article 77 stipulates that all executive orders of the Government of India shall be taken in the name of the President. Article 78 specifies the duties of the Indian Prime Minister with respect to the furnishing of information to the President, etc. Articles 79-106 relate to the Indian Parliament and deal with the organisation of the Lok Sabha and the Rajya Sabha; the delimitation of territorial constituencies; qualifications for membership of Parliament; power of the President to summon, prorogue and address either House of Parliament; disqualifications of members; powers, privileges and immunities of Parliament and its members, salaries and allowances of members and so on. Articles 107-122 deal with the legislative procedure in Parliament. Article 123 deals with the legislative powers of the President. Articles 124 to 147 deal with the union judiciary. Articles 148-151 deal with the Comptroller and Auditor General of India. **Part VI (152-237)** deals with the government at the state level. Article 152 distinguishes Jammu and Kashmir from the category of other states. Articles 163-164 deal with the chief minister and his council of ministers. Article 165 deals with the advocate general of the state. Article 166 relates to the conduct of business of the government of the state. Article 167 relates to the duties of chief minister with respect to furnishing of information to the governor. Articles 168-195 deal with the organization of state legislatures and so on. Articles 196-212 deal with legislative procedure in the States. Article 213 deals with the legislative powers of the governor. Articles 214-232 deal with the organization and powers of High Court in the states. Articles 233-237 deal with the subordinate courts. **Part VII (238)** comprising Article 238, which dealt with states in Part B of the First Schedule, was repealed in 1956 by the Seventh Amendment. **Part VIII (239-241)** deals with union territories. Articles 239-241 contain provisions regarding the administration of union territories. Article 242 relating to Coorg and was repealed by the Seventh

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Amendment in 1956 **Part IX** (Article 243 and its parts) relating to territories in Part D of the First Schedule and other territories was repealed in 1956. A new Part IX was added to the Constitution by the Seventy-third Amendment Act, 1992, It comprises of 16 articles and a new schedule 'Schedule Eleven'. These articles provide for the constitution, composition, election, duration, powers and responsibilities and powers to levy taxes and duties by the Panchayati Raj institutions in the rural areas. Schedule Eleven contains 29 subjects on which the panchayats have administrative control. A new Part IX-A to the Constitution was added by the Seventy-fourth Amendment Act, 1992. It consists of 18 articles and a new schedule 'Schedule Twelve'. These articles provide for the constitution, composition, elections, and duration of municipalities, powers and responsibilities of municipalities in respect of preparation of plans for economic development, levy tax and other duties. Schedule Twelve contains 18 subjects on which the municipalities exercise administrative control. **Part X(244, 244A)** deals with the scheduled and tribal areas and contains Articles 244-244A. **Part XI** deals with relations between the union and the states. Articles 245-255 deal with the legislative relations. Articles 256-263 deal with administrative relations. **Part XII (264-300A)** deals with finance, property, contracts and suits (264-267). Articles 268-300A deal with the distribution of revenue between the union and states, appointment of finance commission, miscellaneous financial provisions, borrowings by the Government of India and states property, contracts. rights. liabilities, and obligation suits. **Part XIII (301-307)** relates to trade, commerce and intercourse within the territory of India. **Part XIV (308-323)** relates to services under the union and states and contains Articles 308-314. Articles 315-323 relate to the Union Public Service Commission (UPSC) and public service commissions in the states. **Part XIVA (323A, 323B)** inserted by the Forty-second Amendment in 1976 contains only Articles 323A-323B which deal with administrative tribunals which may be set up by the Parliament to hear disputes and complaints regarding union, states or local government employees as well as for other matters. **Part XV (324-**



## Spardha Mithra coaching Centre

### Indian Polity and Governance

**329)** deals with elections. Article 324 relates to the Election Commission. Articles 325-329 refer to other matters relating to elections. **Part XVI (330-342)** concerns with special provisions relating to certain classes such as reservation of seats for Scheduled Castes and Scheduled Tribes in Lok Sabha and State Assemblies; representation of the Anglo-Indian community in Lok Sabha and legislative assemblies; claims of Scheduled Castes and Scheduled Tribes to services and posts; special provisions regarding educational grants; appointment of commission to investigate conditions of backward classes, etc. **Part XVII (343-351)** relates to official language. **Part XVIII (352-360)** deals with emergency provisions. Article 352 contains provisions regarding emergency due to external aggression or armed rebellion. Article 353 deals with the effects of the above proclamation of emergency. Article 354 relates to changes that can be effected in the distribution of revenues between the central and state governments. Article 355 assigns the duty of the union to protect the states against external aggression and internal disturbances and ensure that government is carried on in accordance with the provisions of the Constitution. Article 356 deals with the President's rule in the states. Article 357 authorizes Parliament to confer on the President the power to make laws on state subjects and authorizes the President to permit expenditure from the consolidated fund of the state. Article 358 provides for automatic suspension of Article 19 (regarding right to freedom) when emergency under Article 352 is in operation. Article 359 authorizes the President to suspend the enforcement of the rights under Part III. Article 360 relates to financial emergency **Part XIX(361-367)** contains miscellaneous provisions, regarding exemption of the President and governors from criminal proceedings for their official acts; immunity from court proceedings for publication of the report of proceedings of the Parliament and state legislature and so on. This part contains Articles 361-367. Part XX (368) deals with the method of the amendment of the Constitution. It also states that Article 368 deals with the powers of the Parliament to amend the Constitution. **Part XXI** contains Articles between 369 to 392 temporary, transitional and special provisions. Article

## Spardha Mithra coaching Centre

### Indian Polity and Governance

369 accords temporary powers to the Parliament to make laws with respect to certain matters in the state list, as if they were matters in the concurrent list. Article 370 contains temporary provisions relating to Jammu and Kashmir. It restricts the power of Parliament to make laws for the state only with regard to matters listed in the Instrument of Accession and such other matters in the union list and concurrent list which the President may specify with the concurrence of the government of that state. Articles 371A, 371B, 371C, 371D, 371E, 371F, 371G, 371H and 371I relate to special provisions for Maharashtra, Nagaland, Assam, Manipur, Andhra Pradesh, Sikkim, Mizoram, Arunachal Pradesh and Goa. Article 372 deals with the continuance in force of the existing laws and their adaptation. Articles 372-392 deal with several other miscellaneous matters. A number of these articles have since been repealed. **Part XXII (393-395)** is concerned with the commencement and repeal of the Constitution.

**2.1(f) Schedules of the Constitution:** The Constitution of India contains 12 Schedules which provide details about the territories of states and union territories, salaries and allowances of various officials, the forms of oath or affirmation to be taken by various officials, allotment of seats in the Rajya Sabha to various states and union territories, administration and control of Scheduled Areas, administration of tribal areas in certain states, lists that detail the division of powers between the Union and the States, the various regional languages, and various acts and regulations which are protected from judicial scrutiny and lays down disqualifications on the ground of defection. The original Constitution contained eight Schedules. The Ninth Schedule was added by the First Constitutional Amendment in 1951. In 1974, the Tenth Schedule was added to the Constitution by the 35th Amendment. This Schedule laid down the terms and conditions of the 'associate status' of Sikkim. However, it was removed from the Constitution by the 36th Amendment carried out in 1975, when Sikkim was given the status of a full-fledged state. A new Tenth Schedule was added to the Constitution by the 52nd Amendment in 1985. It contains provisions regarding disqualifications on the grounds

## Spardha Mithra coaching Centre

### Indian Polity and Governance

of defection. The Eleventh Schedule was added to the Constitution by the 73rd Amendment, carried out in December 1992. This Schedule contains 29 subjects, on which the Panchayats enjoy administrative control. The Twelfth Schedule was added to the Constitution by 74th Amendment, in December 1992. It lists 18 subjects, on which municipalities enjoy administrative control.

**Schedule One** deals with the territories of the 28 states and seven union territories of the Indian Union. **Schedule Two** deals with the salaries, allowances, etc. of the President, Vice-President, Speaker, judges of the Supreme Court and High Courts, the Comptroller and Auditor General, etc. **Schedule Three** prescribes the various forms of oath or affirmation which various incumbents have to take before assuming a public office. **Schedule Four** details the seats allotted to various states and union territories in the Rajya Sabha (Council of States). **Schedule Five** deals with the administration and control of the Scheduled Areas. **Schedule Six** deals with provisions regarding administration of tribal areas in the states of Assam, Meghalaya and Mizoram. **Schedule Seven** details the subjects contained in the three lists—union list, state list and concurrent list, over which the Union and State governments enjoy authority to make laws. **Schedule Eight** gives the list of 22 regional languages recognized by the Constitution. Of these, 14 were recognized by the original Constitution (Assamese, Bengali, Gujarati, Hindi, Kannada, Kashmiri, Malayalam, Marathi, Odia, Punjabi, Sanskrit, Tamil, Telugu and Urdu), the 15th (Sindhi) was added by the 21st Amendment in 1967; and three, viz., Konkani, Manipuri and Nepali, were added by the 71st Amendment in 1992. In 2004 four more languages were added to the Eighth Schedule viz Bodo, Maithali, Santhali and Dogri. With this the total number of regional languages increased to 22. **Schedule Nine** contains certain Acts and Regulations of the state legislatures dealing with land reforms and abolition of the zamindari system. These acts and regulations are protected from judicial scrutiny. In January 2007, the Supreme Court of India pronounced an important judgment whereby all the laws included in the 9th Schedule of the Constitution after 24 April 1973, can be

## Spardha Mithra coaching Centre

### Indian Polity and Governance

challenged in the court if they violate the rights granted under Articles 14, 19, 20 and 21. It is noteworthy that the Ninth Schedule was added in the Constitution for the elimination of zamindari system and protect the land reform measures. However, subsequently the political leaders, taking advantage of their majority in the Parliament, listed several laws in the 9th schedule to exempt them from judicial review. At present, there are 284 laws in the Ninth Schedule. The above decision of the Supreme Court seeks to prevent the misuse of the Ninth Schedule. Schedule Ten This Schedule inserted by the 52nd Amendment in 1985, contains provisions regarding disqualifications on grounds of defection. Schedule Eleven inserted by 73rd Amendment in 1992, lists 29 subjects, on which the panchayats have been given administrative control. Schedule Twelve added by 74th Amendment in 1992, lists 18 subjects, on which the municipalities have administrative control.

### **3. TERRITORY**

At the time of India's independence, there existed two political units: the British provinces and the princely states. The Indian Independence Act 1947 stated that the princely states were free to either join India or Pakistan (both were carved out of the British India provinces) or remain independent. While most of the 562 states joined India or Pakistan, some such as Hyderabad and Junagarh acceded to India after a while. Jammu & Kashmir too acceded to India but before the instruments of accession could be sent to India, the tribal forces from Pakistan, supported by Pakistan itself, forcibly entered into the state and occupied a part of Kashmir which, till date, remains under Pakistan's occupation.

On the whole, the problem of the integration of princely states was ably handled by Sardar Vallabhbhai Patel with the help of VP Menon, secretary, states ministry. They prepared elaborate plans to make the integration or merger of princely states as smooth as possible. Some small princely states which could not form separate administrative units were merged with the nearby princely states or former British provinces. In all, 216 states were merged with former Indian provinces; 275 big

## Spardha Mithra coaching Centre

### Indian Polity and Governance

states or newly formed unions of small princely states were put under a separate category of states. Sixty-one petty states which were very backward were converted into chief commissioner's provinces. The islands of Andaman and Nicobar were put in a separate category. The Constitution thus provided a four-fold distribution of states, viz., A, B, C and D, the details of states under each is given as follows.

- **Part A States**, which were the former provinces, were ruled by an appointed governor and elected state legislature. The nine Part A States were Assam, West Bengal, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Odisha, Punjab and Uttar Pradesh (formerly United Provinces).
- The eight **Part B States** were formerly princely state or groups of princely states governed by a rajpramukh. They were Jammu and Kashmir, Hyderabad, Saurashtra, Mysore, Travancore-Cochin, Madhya Bharat, Vindhya Pradesh, Patiala and East Punjab States Union (PEPSU), and Rajasthan.
- The ten **Part C States** included both, former princely states and provinces. They were governed by a chief commissioner. The Part C States included Delhi, Kutch, Himachal Pradesh, Bilaspur, Coorg, Bhopal, Manipur, Ajmer, Merwara and Tripura.

The part D states included small territories such as Andaman and Nicobar, etc.

The reorganization efforts began in 1948 when a commission under S.K. Dhar was appointed to examine the whole problem of reorganization. The commission favored reorganization on the basis of consideration such as historical, geographical and economic and administrative. Later, the NP (Jawahar Lal Nehru, Vallabhai Patel and Pattabhi Sitarammaya) committee, in December, 1948, though dismissed the idea of reorganization of states on linguistic bases, stated that the problem be reexamined in the light of public demand. A three-member States Reorganization Commission headed by Fail Ali (its two other members

## Spardha Mithra coaching Centre

### Indian Polity and Governance

were K.M. Panikkar and H.N. Kunzru) recommended the abolition of the earlier classification of states and suggested the creation of States on linguistic basis. Accordingly, the States Reorganization Act (1956) was passed with 14 states and 6 union territories. With the passage of time, there are now 28 states and 7 union territories.

Article 1(1) of the Constitution describes India that is Bharat, as the Union of States. Article 1(2) says that the states and territories forming part of India shall be specified in the First Schedule. Article 1(3) says that the territories of India shall comprise:

- (a) the territories of the states;
- (b) the Union Territories specified in the First Schedule: and
- (c) such other territories as may be acquired.

Article 2 authorises the Parliament to admit into the Union or establish new states. Article 2(3) of the Constitution states as to how the new states can be formed and how alterations of areas, boundaries or names of the existing States can be changed. It says that the Parliament may by law:

- (a) form a new State by separation of territory from any State or by uniting two or more States, or parts of States, or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State.

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless where the proposal contained in the Bill affects the area, boundaries or name of any of the States, or the Bill has been referred by the President of the Legislature of that State for expressing its views thereon within such

## Spardha Mithra coaching Centre

### Indian Polity and Governance

period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired. A brief description of how the number of States has increased from 14 to 28 is given below:

- (a) Bombay was divided into Maharashtra and Gujarat in 1960.
- (b) Dadra and Nagar Haveli became a Union Territory by the 10th amendment in 1961.
- (c) Goa, Daman and Diu became Union Territories by the 12th amendment in 1962. Later, Goa was conferred statehood.
- (d) Nagaland became a State in 1963 by the 13th amendment.
- (e) Pondicherry was made a Union Territory by the 14th amendment in 1962.
- (f) In 1966, the state of Punjab was bifurcated and the state of Haryana was created. So was created the Union Territory of Chandigarh; in 1971, the Union Territory of Himachal Pradesh was elevated to become a full-fledged State.
- (g) In 1972, the Union Territories of Manipur and Tripura became States; sub-state Meghalaya also got statehood while two new Union Territories—Mizoram and Arunachal Pradesh were created.
- (h) Sikkim was made an associate state by 35th amendment (1974), and it became a full state by the 36th amendment in 1975.
- (i) In 1987, three new States of Mizoram, Arunachal Pradesh and Goa came into being.
- (j) In 2000, three new States—Chhattisgarh, Uttaranchal (later Uttarakhand), and Jharkhand—came up.

There have been changes in the names of the States. The state of United Provinces became 'Uttar Pradesh' in 1950; Madras became Tamil Nadu in 1969; Mysore became Karnataka in 1973. Laccadive, Minicoy and Am

## Spardha Mithra coaching Centre

### Indian Polity and Governance

inidivi islands became Lakshadweep in 1973. The union territory of Delhi was re-designated as the National Capital Territory of Delhi in 1992 by the 69th amendment. Orissa is named as Odisha and West Bengal, as Paschimbanga and Pondicherry as Puducherry.

#### 4. CITIZENSHIP

Citizenship is not only a matter of rights; it is also a matter of duties. A citizen, by virtue of his/her citizenship, is entitled to certain rights, and by the same token, is expected to perform certain duties. His/her rights include franchise rights, right to contest elections, right to hold public office, while his/her duties would include payment of taxes or any other service expected of him/her. The Constitution of India confers citizenship on those who are citizens, and not on aliens. In numerous articles, the word 'citizen' is used while in some others; the word 'person' is used. This means that where the word 'citizen' is used, citizen alone has the right to avail those rights, and where the word 'person' is used, any person (alien subject, a minor or a citizen) can avail of this facility, For example, article 14 uses the word 'person' to specify a facility that is available to everyone. It says: 'The State shall not deny to any person equality before law or equal protection of law'. The next article, i.e., Article 15, says: 'The State shall not discriminate against any citizen on grounds, only of religion, race, caste, sex, place of birth or any of them'. Where the word citizen is used, it is the citizen's privilege and not that of the alien. Alien is a 'person', but he/ she is not a 'citizen'.

According to Article 5, every person who has domicile in the territory of India and

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or



## Spardha Mithra coaching Centre

### Indian Polity and Governance

(c) who has been ordinary resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 6 says: "Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan is entitled to be citizen of India at the commencement of the Constitution if:

(a) he or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948. he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him, therefore, to such officer before the commencement of this Constitution in the form and manner prescribed by the Government.

Provided that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

But any person who has migrated to Pakistan permanently or any person who is residing outside India permanently, unless registered in both cases, by the diplomatic representative of India, shall not be deemed citizen of India.

The Citizenship Act, 1955 prescribes that the citizenship may be acquired as follows:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (a) Citizenship by birth. Every person born in India on or after January 26, 1950, shall be a citizen of India by birth.
- (b) Citizenship by descent. A person born outside India on or after January 26, 1950, shall be a citizen of India by descent, if either of his parents is a citizen of India at the time of the person's birth.
- (c) Citizenship by registration. Several classes of persons (who have not otherwise acquired Indian citizenship) can acquire Indian citizenship by registering themselves to that effect before the prescribed authority.
- (d) Citizenship by naturalization. A foreigner can acquire Indian citizenship on application for naturalization to the Government of India.
- (e) Citizenship by incorporation of territory. If any territory becomes a part of India, the Government of India shall specify the persons of that territory who shall be the citizens of India.

The Citizenship Act, 1955, also lays down the citizenship of India may be lost—whether it was acquired under the Citizenship Act, 1955, or prior to it—under the provisions of the Constitution (i.e. under Articles 5-8). It may happen in any of three ways —renunciation; termination and deprivation.

- (a) Renunciation is a voluntary act by which a person holding the citizenship of India as well as that of another country may abjure one of them.
- (b) Termination shall take place by operation of law as soon as a citizen of India voluntarily acquires the citizenship of another country.
- (c) Deprivation of a compulsory termination of the citizenship of India, by an order of the Government of India, if it is satisfied, for example, that Indian citizenship had been acquired by a person by fraud, or that he has shown himself to be disloyal or disaffected towards the Constitution of India.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

There is a provision of **single citizenship** of India, though we have a federal system of government.

The amendments in the Citizenship Act of 1955 made in 1986 and 2003 provide for harsh measures of restrict refugees from Bangladesh and Sri Lanka to attain Indian citizenship.

Every person who is a citizen of a Commonwealth country, by virtue of that citizenship enjoys the status of **Commonwealth Citizenship in India**. The Indian Citizenship Act 1955 empowers the Central Government to make provisions on the basis of reciprocity for the enforcement of all or any of the rights of a citizen of India on the citizens of U.K. Australia, Canada, Ceylon (Sri Lanka), New Zealand, Pakistan and other Commonwealth countries.

In December 2003 a new law was passed which permits the people of Indian origin (PIOs) residing in countries viz. Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, The Netherlands, New Zealand, Portugal, Cyprus, Sweden, Switzerland, UK and United States, to have **dual citizenship** status. This will enable them to participate in the economic activities and acquire real estate. As of January, 2006. the Indian government has introduced the "Overseas Citizenship of India" (OCI) so as to allow a limited form of dual citizenship. To conclude, it may be said that only natural/naturalized persons are citizens, and not a registered company or corporation as juristic person (See State Trading Corporation of India v. Commercial Tax Officer (1963), though the shareholders of the Company are citizens (See Bank Nationalization case, 1970).

#### **5. AMENDMENT PROCESS AND BASIC STRUCTURE DOCTRINE**

The state's life has to be vibrant if it has to go along the fast changing world of ours. The circumstances keep changing continuously. A state's constitution, drafted at a particular time and in a particular context and frame, may prove inadequate at a later stage. It is, therefore, important that the constitution must change if it has to be in pace with the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

changing times; time would not go reverse itself, the Constitution would have to adapt with the passing circumstances.

**5.1(i) Amendment: What it Means?** The amendment of the constitution means modification in the constitution by way of addition, deletion, or correction so as to suit it to the needs of the times. "Amendment", according to Oxford's Dictionary of Law, means changes made to legislation for the purposes of adding to, correcting or modifying the operation of the legislation. Black's Law Dictionary defines amendment as a "formal revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument." The Kesavananda Bharati (1973) case provides yet, another definition of an amendment: "A broad definition of the word 'Amendment' will include any alteration or change. The word 'amendment' when used in connection with the constitution, may refer to the addition of a provision on a new and independent subject, complete in itself and wholly disconnected from other provisions, or to some particular article or clause and is then used to indicate an addition to, the striking out, or some change in that particular article or clause". So understood, amendment, in the context of the constitution, thus, means any change, alteration, addition, deletion or correction in any article or clause of the constitution.

**5.1(ii) Amendment–A necessity** The amendment in the Constitution is considered a necessity in view of the fact that the Constitution has to be kept in pace with the changing circumstances. Between the changing times and a Constitution written at a particular time, it is the Constitution which has to adapt itself to the changing circumstances. As circumstances change, the Constitution has also to be changed; as difficulties and complications emerge in the working of the Constitution, they have to be encountered through changes in the Constitution. The old generation, drafting the Constitution, has no right to place fetters on future generations to mould the machinery of the government according to their circumstances. Amendment in the Constitution is made

## Spardha Mithra coaching Centre

### Indian Polity and Governance

necessary so to keep the Constitution 'alive' and 'living'. The procedure for amendment of the Constitution must be a part of the Constitution itself.

**5.1(iii) Amendment–How to Make it?** Amendment in the Constitution is as important as is the Constitution itself ; it makes the Constitution 'live'. How are the amendments made, usually? With regard to the amendment, the Constitutions are classified as flexible or rigid or both. Usually the unwritten Constitutions (examples United Kingdom, Israel, New Zealand) are flexible while the written constitutions are usually rigid (examples Switzerland, People's China, India and the like). Flexible Constitutions are those where there is no difference between the amending process and the law-making process. As the law is made through simple majority in the legislature, i.e. 50% plus one, the amendment process always requires the passage of the amendment bill by simple majority. All flexible Constitutions are alike. The rigid Constitutions seek a majority which is more than just simple majority, i.e., a majority more than 50.1%, it may be 2/3 (66 %), 3/4 majority (75%) and the like. As the rigid Constitution of the world ask for differing majorities, all rigid Constitutions are not alike. In some Constitutions, there is a requirement for simple majority for amending some articles/clauses of the Constitution while for others, the requirement is special majority. Such constitutions are both flexible as well as rigid. The USA, Germany and the like are examples of rigid Constitutions. While the American Constitution is an example of a rigid Constitution, the Indian Constitution is an example of a Constitution which is partly flexible and partly rigid.

### **5.2 Procedure of Amendment in India**

The framers of the Indian Constitution did not favour too rigid a Constitution. for they had thought that a very lengthy Constitution like that of ours (Articles 395, Schedules 8, having both the most important and the most unimportant provisions) cannot afford to be either all rigid or all

## Spardha Mithra coaching Centre

### Indian Polity and Governance

flexible. Jawaharlal Nehru spoke the mind of the members of the Constituent Assembly when he had said; "While we want this Constitution to be as solid and permanent as we can make it, there is no permanence in the Constitution. There should be a certain flexibility. If you make anything rigid and permanent, you stop the nation's growth, of a living, vital, organic people". In any event, we could not make this Constitution so rigid that it cannot be adapted to changing conditions. When the world is in a period of transition what we may do today may not be wholly applicable tomorrow". Thus the Constitution of India is not so ordinary that it can be modified like any other law and it is not so sacred that nobody ever can change it. It is both alterable as well as unalterable, a combination of flexibility and rigidity: some of its articles can be amended by a method as that of ordinary law while others, by a method as are required by special majority while still others, by a method as are required by special majority of the two Houses of Parliament supported by half of the States in India.

The amendment of the Constitution falls under two categories:

- (a) some of the provisions of the Constitution can be amended at the instance of the states and
- b) other provisions of the Constitution can be amended at the instance of the Union Parliament. Those provisions which can be amended at the instances of the Union Parliament can be further classified into three categories;
  - (i) for some such articles, the simple majority method is required in each House of the Parliament,
  - (ii) for some other such articles, the special majority method is required in each House of the Parliament, &
  - (iii) for still some other such articles, method under Article 368 is required to be complied with. For 'a' and ' b'
- (i), the Constitution is flexible; for 'b'

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (ii). the Constitution is rigid. while for 'b'
- (iii), the Constitution is 'very rigid'.

**5.2(a) Amendments at the Instance of the States:** The amendments at the instance of the state governments fall under two categories:

(a) some of the provisions of the Constitution can be amended at the instance of a State, and

(b) some can be amended in consultation with the States. The provisions relating to the retention and abolition of the Upper House in a state fall under the first category. Whether a state will create or abolish an Upper House, entirely depends on the will of the state. When, under Article 169, a state assembly passes a resolution by a majority of not less than two-thirds of its members present and voting for having or abolishing its Upper House, Parliament may pass a law in this behalf by a simple majority. Once such a law is passed. the Constitution stands amended.

The provisions relating to the formation of a state and alteration of the boundaries or name of a state fall under the second category. Under Articles 3 and 4. Parliament has the power to form new states and alter the boundaries and names of the existing states. It can also make consequential changes in Schedules I and IV. Parliament can do so by passing a law by a simple majority. But no such Bill can be introduced in Parliament except on the recommendations of the President. When such a law is going to affect the area, boundary or name of a state, the Bill has to be referred to the legislature of the affected state for its views thereon within such period as may be specified in the reference (this period may be extended by the President). Once such a law is passed, the Constitution stands amended accordingly.

**5.2(b) Amendments by a Simple Majority in Each House of the Parliament:** The following provisions of the Constitution can be amended by a simple majority at the instance of the Union Government through the proposal passed in each House of the Parliament:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(i) Admission of a new state under Article 2, along with the consequential amendments in Schedule I (which defines the territory of a State) and Schedule IV.

(ii) Provisions relating to the citizenship of India. Article 11;

(iii) Provisions relating to the exercise of executive power by a state or its officers in respect of a matter over which Parliament has power to make laws; Article 73(2); (iv) Provisions relating to the salaries and allowances of ministers : Articles 75(6) and the consequential and amendments to Schedule II;

(v) Provisions relating to the salaries and allowances of the Speaker and Deputy Speaker of the House of the People, and the Chairman and the Deputy Chairman of the Council of States, Article 97 and the consequential amendments to Schedule H:

(vi) Provisions relating to the salaries and allowances of the Members of Parliament, Article 106; (vii) Provisions relating to the number of judges in the Supreme Court; Article 124 (1); (viii) Provisions relating to the privileges, allowances and rights of judges of the Supreme Court: Article 125(2); (ix) Provisions relating to the appeals to the Supreme Court; Article 133(3); (x) Provisions relating to review of the judgments of the Supreme Court; Article 137; (xi) Provisions relating to the salaries and allowances of the Comptroller and the Auditor General; Article 148 (3) and the consequential amendments to Schedule II; (xii) Provisions relating to the composition of the Legislative Councils; Article 172 (2); (xiii) Provisions relating to the salaries and allowances of the judges of the High Court : Article 221 (2) and the consequential amendments to Schedule-II; (xiv) Provisions relating to English language; Article 343(3); (xv) Provisions relating to the language to be used in the Supreme Court and the High Courts : Article 348

(I); (xvi) Provisions relating to the creation of Legislature and Council of Ministers for a Union Territory: Article 239 (A); (xvii) Provisions relating to the administration and control of the Scheduled Areas and Scheduled Tribes : Para 7 of Schedule

V; and (xviii) Provisions relating to the administration and control of Tribal Areas : Para 21 of Schedule VI.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

In addition to Parliament's power to amend the Constitution in the aforesaid areas, the States Legislative Assemblies also have the power to amend Article 164 (5) which relates to the salaries and allowances of ministers in the States.

Strictly speaking, the amendments in the aforesaid areas cannot be called constitutional amendments, because, for these amendments, the procedure laid down in Article 368 (which specially deals with amendments of the Constitution) is not required to be followed. However, it is averred here that these are amendments to the Constitution in as much as the Constitution stands amended. albeit by simple majority.

**5.2(c) Amendments by a Special Majority in each House of the Parliament followed by Ratification of one-half of the States:** Article 368 of the Constitution deals with the amendment of the Constitution. The article reads as under:

Article 368. Power of Parliament to amend the Constitution and procedure therefore

- (1) Notwithstanding, anything in Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.
- (2) An amendment of this Constitution may be initiated only by the introduction of a Bill passed in each House by a majority of the total membership of that House, and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in

- (a) Article 54, Article 55. Article 73. Article 162, Article 241, or
- (b) Chapter IV of Part V, Chapter V of Part VI. or Chapter I of Part XI, or
- (c) any of the Lists in the Seventh Schedule. or
- (d) the representation of States in Parliament, or

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(e) the provision of this Article.

The amendment shall also require to be ratified by the Legislatures of not less than one half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

- (3) Nothing in Article 13 shall apply to any amendment under this amendment.
- (4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article (whether before or after the commencement of Section 55 of the Constitution (Forty Second Amendment) Act, 1976 shall be called in question in any Court on any ground.
- (5) For the removal of doubts. it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition. variation or repeal the provisions of this Constitution under this Article.

In the above text, the amplified marginal heading to the article clauses 1 and 3 and amendment in clause 2, were inserted by the 24th Amendment Act. 1971 and clauses 4 and 5, by the 42nd Amendment Act. 1976.

**5.2(d) Amendments of other provisions through Special Majority of the each House of the Parliament:** The provisions other than those mentioned above can be amended by a special majority of the each House of the Parliament. The amendment proposal can be initiated in either House of the Parliament and has to be passed by a special majority of the total membership of each House of Parliament and by a majority of not less than two-thirds of the members of each House present and voting. For the amendment of these provisions, no ratification by the states is required.

In each of the aforesaid cases. an amendment of the Constitution can be initiated only by an introduction of a Bill in either House of Parliament. and in each case, the assent of the President of India is obligatory. Without the assent of the President the Constitution cannot stand amended. However,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the President can not refuse assent to the amendment proposals passed by the Parliament.

### 5.3 Special Features of the Amendment Procedures in India

Of the methods of amending the Constitution as specified above, there are certain special features. Some of these are:

- (i) Parliament and legislatures of the States participate in the amendment procedure. There is no provision of any special body for purposes of amendment.
- (ii) The State legislatures participate in the amendment when changes are to be made what is included in Article 368.
- (iii) There is no provision for referendum in amendment procedure in India.
- (iv) The people cannot initiate any amendment proposal; only the Parliament can initiate such proposals.
- (v) There is no provision of any joint sittings of the two Houses of the Parliament to remove the deadlock relating to the amendment proposals.
- (vi) The prior permission of the President is not required for introducing the amendment bills.
- (vii) The President can neither refuse nor withhold his/her assent to the amendment bills passed by the legislatures.
- (viii) There is the requirement of simple majority when the amending proposals are put before the State legislatures.

### 5.4 Constitutional Amendments

There have been 97 amendments till January, 2012, in the Indian Constitution. These are as, under:

1. **The First Amendment** was carried out in 1951 to overcome certain practical difficulties relating to Fundamental Rights pertaining to

## Spardha Mithra coaching Centre

### Indian Polity and Governance

equality, liberty and property. It made provisions for special treatment to the educationally and socially backward classes, and added the Ninth Schedule to the Constitution. The acts listed in the Ninth Schedule cannot be challenged by the courts.

2. **The Second Amendment** was carried out in 1952 and readjusted the scale of representation in the Lok Sabha on the basis of the Census of 1951.
3. **The Third Amendment** carried out in 1954, extended the powers of the Parliament by transferring certain items from the state list to the concurrent list.
4. **The Fourth Amendment** was carried out in 1955. It amended provisions relating to property, trade and commerce. It deprived the courts of the right to decide the adequacy of compensation for acquisition of property. It authorized the state to nationalize any trade.
5. **The Fifth Amendment (1955)** empowered the President to fix the time limit for state legislatures to express their views on central laws affecting the areas and boundaries of states.
6. **The Sixth Amendment (1956)** made changes in provisions relating to inter-state sales tax and empowered Parliament to tax certain articles.
7. **The Seventh Amendment (1956)** was necessitated to implement the recommendations of the States Reorganisation Commission regarding the reorganisation of the states on a linguistic basis and introduced changes in the First and the Fourth Schedules.
8. **The Eighth Amendment (1959)** extended reservations for the Scheduled Castes, Scheduled Tribes and Anglo Indians for a period of 10 years, i.e. 1970.
9. **The Ninth Amendment (1960)** made certain changes in the First Schedule, which became necessary on account of the transfer of certain territories like Berubari, Khulna, etc. to Pakistan as a result of an agreement concluded by the two governments.
10. **The Tenth Amendment (1961)** incorporated the territories of Dadra and Nagar Haveli in the Indian Union,
11. **The Eleventh Amendment (1961)** made changes in the procedure of election of the Vice- President and provided for a joint meeting of the two Houses of Parliament. It also provided that the election of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

President or Vice-President would not be challenged on the ground of vacancy in the appropriate electoral college.

12. **The Twelfth Amendment (1962)** incorporated the territories of Goa, Daman and Diu in the Indian Union.
13. **The Thirteenth Amendment (1962)** made special provisions for Nagaland and gave it the status of a state.
14. **The Fourteenth Amendment (1963)** incorporated the former French territory of Pondicherry in the Indian Union. It also provided legislatures and/or councils of ministers for the Union Territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu and Pondicherry.
15. **The Fifteenth Amendment (1963)** raised the retirement age of High Court judges from 60 to 62 and made provisions for the appointment of retired judges to the High Court.
16. **The Sixteenth Amendment (1963)** imposed certain restrictions on the fundamental rights of citizens in the interest of the sovereignty and integrity of the country. It also made changes in the form of oath given in the Third Schedule by adding the words "I will uphold the sovereignty and integrity of India-".
17. **The Seventeenth Amendment (1964)** further amended the right to private property and added more land reform acts to the Ninth Schedule so that their validity could not be disputed in any court of law.
18. **The Eighteenth Amendment (1966)** was passed to facilitate the reorganization of Punjab on a linguistic basis into Punjab and Haryana. It also transferred some territory to Himachal Pradesh and created the Union Territory of Chandigarh.
19. **The Nineteenth Amendment (1966)** made changes in the powers of the Election Commission and authorized High Court to hear election petitions.
20. **The Twentieth Amendment (1966)** validated the appointment, posting or promotion of a person as a district judge and the judgments delivered by them, even if they were not in accordance with Articles 233 or 235 of the Constitution dealing with the control over subordinate courts by a High Court, etc.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

21. **The Twenty-first Amendment (1967)** included Sindhi as the 15th regional language in the Eighth Schedule.
22. **The Twenty-second Amendment (1969)** created the autonomous sub-state of Meghalaya within Assam.
23. **The Twenty-third Amendment (1969)** extended the reservation of seats for Scheduled Castes and Scheduled Tribes and nomination of Anglo Indians for a further period of 10 years (up to 1980).
24. **The Twenty-fourth Amendment (1971)** affirmed the right of the Parliament to amend any part of the Constitution including Fundamental Rights. It made the assent of the President to such amendments automatic. Thus, this amendment overcame the restrictions imposed on the powers of the Parliament to amend Fundamental Rights due to the Supreme Court's judgment in the GolakNath case.
25. **The Twenty-fifth Amendment (1972)** curtailed the right to private property and provided that any law passed to give effect to the Directive Principles of State Policy contained in Article 39(b) or (c) would not be void even if it came in conflict with the rights granted under Articles 14, 19, and 31 of the Constitution.
26. **The Twenty-sixth Amendment (1971)** abolished the titles and special privileges of former rulers of princely states.
27. **The Twenty-seventh Amendment (1971)** created the Union Territories of Mizoram and Arunachal Pradesh.
28. **The Twenty-eighth Amendment (1971)** did away with the Parliament to determine their service conditions.
29. **The Twenty-ninth Amendment (1972)** included the Kerala Land Reforms (Amendment) Act 1969. and Kerala Land Reforms (Amendment) Act, 1971 in the Ninth Schedule to ensure that their constitutional validity was not challenged in any court.
30. **The Thirtieth Amendment (1973)** did away with the provisions which permitted appeal to the Supreme Court in civil cases involving an amount of Rs 20,000 and provided that an appeal could be taken to the Supreme Court only if a substantial question of law was involved in the case.

Spardha Mithra coaching Centre  
Indian Polity and Governance

31. **The Thirty-first Amendment (1973)** raised the number of Lok Sabha seats from 525 to 545, and reduced the representation of the union territories from 25 to 20.
32. **The Thirty-second Amendment (1974)** made certain special provisions with respect to the state of Andhra Pradesh.
33. **The Thirty-third Amendment (1974)** invalidated resignations tendered by members of Parliament and state legislatures under duress or coercion and authorised the presiding officers to accept these resignations only if they were voluntary and genuine.
34. **The Thirty-fourth Amendment (1974)** added 17 new land reform acts relating to ceiling on land holdings in the Ninth schedule with a view to granting them immunity against judicial challenge.
35. **The Thirty-fifth Amendment (1974)** terminated the protectorate status of Sikkim and accorded it the status of an associate state with the right to send one representative each to the Lok Sabha and Rajya Sabha.
36. **The Thirty-sixth Amendment (1975)** accorded Sikkim the status of a full-fledged state.
37. **The Thirty-seventh Amendment (1975)** provided legislative assemblies and councils of ministers in Arunachal Pradesh and other centrally administered areas.
38. **The Thirty-eighth Amendment (1975)** provided that the right of the President to make a declaration of emergency and promulgation of ordinances by the President, governors and administrative heads of union territories would be final and could not be challenged in any court of law. It also authorised the President to declare different proclamations on different grounds.
39. **The Thirty-ninth Amendment (1976)** placed the election of the President, Vice-President, Prime Minister and Speaker of the Lok Sabha beyond the purview of the judiciary. Election disputes regarding these officers were to be heard by special courts to be set up by Parliament and not by High Courts or the Supreme Court.
40. **The Fortieth Amendment (1976)** added 64 central and state laws, mostly relating to land reforms, to the Ninth Schedule with a view to removing them from the purview of the judiciary. It also authorized the Parliament to specify by law the limits of the country's territorial waters,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the continental shelf, the exclusive economic zone and other maritime zones.

41. **The Forty-first Amendment (1976)** raised the retirement age of members of the state public service commission from 60 to 62.
42. **The Forty-second Amendment (1976)** was the most comprehensive amendment to the Constitution and carried out major changes. Some prominent changes made were:
  - (a) it added the words 'Socialist' and 'Secular' in the Preamble.
  - (b) It provided that laws enacted for the implementation of Directive Principles could not be struck down by courts on the ground that they violated some Fundamental Rights.
  - (c) It added a set of 10 Fundamental Duties in the Constitution.
  - (d) It asserted the supremacy of Parliament with regard to the amendment of the Constitution.
  - (e) It curtailed the powers of the High Courts and the Supreme Court with regard to the issue of writs and judicial review.
  - (f) It froze the seats in the Lok Sabha and state assemblies on the basis of the 1971 census till 2001 AD.
  - (g) It raised the tenure of the Lok Sabha and state assemblies from five to six years.
  - (h) It made it obligatory for the President to act on the advice of the council of ministers.
  - (i) It transferred subjects like forests, education, population control from the state list to the concurrent list.
  - (j) It provided for administrative tribunals for speedy and substantial justice.
  - (k) It granted the union government the power to deploy armed forces in any state to deal with a 'grave situation of law and order'.
  - (l) It authorised Parliament to make laws to deal with anti-national activities and such laws were to take precedence over Fundamental Rights.
43. **The Forty-third Amendment (1977)** was carried out by the Janata Government and sought to nullify some of the changes introduced by the 42nd Amendment:



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (a) It deprived Parliament of the special powers conferred on it by the 42nd amendment to enact laws for the prohibition of anti-national activities.
  - (b) It restored the jurisdiction of the Supreme Court and High Courts to pronounce upon the constitutional validity of laws.
  - (c) It again reduced the term of the Lok Sabha and state legislative assemblies to five years.
  - (d) It did away with the special privileges of the Prime Minister and the Speaker with regard to disputes pertaining to their election to the Lok Sabha.
44. **The Forty-fourth Amendment (1978)** also repealed some of the changes introduced by the 42nd amendment. It modified the emergency provisions of the Constitution to ensure that these were not misused in future. It restored to the Supreme Court and High Courts the jurisdiction and powers they enjoyed before the 42nd amendment was passed. It deleted the right to property from the list of Fundamental Rights and took away from the Centre the power to send its armed forces to any state to meet a grave situation there.
45. **The Forty-fifth Amendment (1980)** extended the reservation of seats and posts for the Scheduled Castes and Scheduled Tribes till 1990.
46. **The Forty-sixth Amendment (1982)** sought to bring about some uniformity in tax rates on certain items and gave sufficient powers to States to plug loopholes in the laws and realise sales tax dues.
47. **The Forty-seventh Amendment (1984)** included 14 land reform acts from different states in the Ninth Schedule to ensure their immunity from litigation. After this amendment the number of acts included in the Ninth Schedule rose to 202.
48. **The Forty-eighth Amendment (1984)** was passed with a view to extending President's rule in Punjab for a further period of six months after October 5, 1984, when the proclamation of emergency was due to expire. In terms

## Spardha Mithra coaching Centre

### Indian Polity and Governance

of Article 356 of the Constitution, the Presidential proclamation could not remain in force in Punjab for more than one year unless the 'special conditions' mentioned in Clause (5) of Article 356 were satisfied.

49. **The Forty-ninth Amendment (1984)** sought to meet the aspirations of the tribal population by giving the Autonomous District Council (ADC) in Tripura a constitutional sanctity. The ADC was expected to provide necessary impetus to the rapid development of tribal areas and ensure self-government for them.
50. **The Fiftieth Amendment (1984)** empowered Parliament to enact laws determining to what extent any of the Fundamental Rights could be restricted or abrogated to ensure proper discharge of duties by the armed forces or forces charged with the maintenance of public order.
51. **The Fifty-first Amendment (1984)** provided for reservation of seats in the Lok Sabha for Scheduled Tribes in Meghalaya, Nagaland, Arunachal Pradesh and Mizoram. It also provided for similar reservation in the legislative assemblies of Nagaland and Meghalaya.
52. **The Fifty-second Amendment (1985)** was unanimously passed by Parliament to curb political defections. The constitutional amendment disqualifies a member of Parliament or the state legislature who leaves the party on whose symbol he or she contested the election. However, the amendment permits a group of people to leave a party and split it in the process. The amendment also added the Tenth Schedule to the Constitution which contains provisions regarding disqualifications on grounds of defection.
53. **The Fifty-third Amendment (1986)** was carried out with a view to providing constitutional protection to the religious and social customs and laws of the Mizo people, It added a new article to the Constitution (371-G) which stipulates that unless the Mizoram assembly decides by a resolution, no act of Parliament shall apply in respect of religious and social practices of Mizos, Mizo customary law and procedure administration of civil and criminal justice involving decisions according to Mizo customary law and ownership and transfer of land. The amendment also stipulates that the Mizoram legislative assembly shall consist of not less than 40 members.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

54. **The Fifty-fourth Amendment (1986)** made changes in provisions of Part D of Second Schedule of the Constitution relating to salaries of judges of Supreme Court and High Courts. It fixed salary of Chief Justice and other judges of Supreme Court at Rs 10,000 and Rs 9,000 per month, respectively. Likewise, it fixed salary of chief justice and other judges of High Courts at Rs 9,000 and Rs 8,000 per month, respectively.
55. **The Fifty-fifth Amendment (1986)** stipulated that the state assembly of Arunachal Pradesh shall have not less than 30 members. It also vested special powers in the governor of the state.
56. **The Fifty-sixth Amendment (1987)** made special provisions in the Constitution for setting up of the state of Goa. It fixed the strength of state legislative assembly at 40, but permitted the continuance of the present 30 members Assembly till it completed its term of five years.
57. **The Fifty-seventh Amendment (1987)** It provided for determination of the assembly constituencies by the delimitation commission for reservation to Scheduled Tribes in Meghalaya, Mizoram, Nagaland and Arunachal Pradesh, on temporary basis.
58. **The Fifty-eighth Amendment (1987)** empowered the President to publish under his authority the translation of the Constitution in Hindi and accorded the same legal sanctity to the Hindi version of the Constitution.
59. **The Fifty-ninth Amendment (1988)** authorised the union government to extend presidential rule in Punjab further by two years. It also authorised the Centre to impose emergency in Punjab on grounds of internal disturbance (a power which was taken away from the Centre by the 44th Amendment in 1978).
60. **The Sixtieth Amendment (1986)** increased the ceiling of professional tax from Rs 250 to Rs 2,500 per person per annum.
61. **The Sixty-first Amendment (1989)** reduced the voting age from 21 years to 18 years for the Lok Sabha as well as for assembly elections.
62. **The Sixty-second Amendment (1989)** extended the reservation of seats for Scheduled Castes and Scheduled Tribes up to AD 2000.
63. **The Sixty-third Amendment** repealed the 59th Amendment which had empowered the union government to impose emergency in Punjab.
64. **The Sixty-fourth Amendment (1990)** extended Presidents' rule in Punjab by six months beyond 11 May, 1990.

Spardha Mithra coaching Centre  
Indian Polity and Governance

65. **The Sixty-fifth Amendment (1990)** accorded statutory status to the Commission for Scheduled Castes and Scheduled Tribes and designated it as the National Commission for the Scheduled Castes and Scheduled Tribes. It stipulated that the Commission shall consist of a chairperson, vice-chairperson and five other members, appointed by the President.
66. **The Sixty-sixth Amendment (1990)** Included 54 new land reform acts passed by various states in the Ninth Schedule to prevent them from being challenged in the courts. As a result of these additions, the total number of land reform acts included in the Ninth Schedule rose to 257.
67. **The Sixty-seventh Amendment (1990)** extended President's rule in Punjab for a further period of six months beyond 11 November, 1990.
68. **The Sixty-eighth Amendment (1991)** extended President's rule in Punjab for a further period of six months beyond 11 May, 1991.
69. **The Sixty-ninth Amendment (1991)** provided for the creation of a 70-member legislative assembly and a 7-member council of ministers for Delhi.
70. **The Seventieth Amendment (1992)** accorded the right to vote in the Presidential election to the members of Pondicherry Assembly and proposed Legislative Assembly for Delhi.
71. **The Seventy-first Amendment (1992)** included Konkani, Manipuri and Nepali languages in the Eighth Schedule of the Constitution. With the inclusion of three new languages in the eighth schedule the number of scheduled languages has risen to 18.
72. **The Seventy-second Amendment (1992)** increased the number of seats for the Scheduled Tribes in the legislative assembly of Tripura in proportion to the total number of seats for general candidates. But this increase was not to effect number of existing assembly until dissolution.
73. **The Seventy-third Amendment (1992)** provided a constitutional guarantee to the formation of Panchayats at village and other levels, direct elections to all seats in Panchayats, reservation of Scheduled Castes, Scheduled Tribes, etc. It fixed the term of Panchayats at five years and provided for mandatory elections at the end of the term. It incorporated 11th Schedule in the constitution, which contains 29 subjects, on which the Panchayats shall have administrative control.
74. **The Seventy-fourth Amendment (1992)** added a new part to the Constitution, relating to urban local bodies. This part contains

## Spardha Mithra coaching Centre

### Indian Polity and Governance

provisions regarding constitution, composition, election, duration of municipalities, powers and responsibilities of municipalities regarding preparation of plans, etc. It also provides for reservation of seats in each municipality for Scheduled Castes, Scheduled Tribes, women and backward classes. It added a 12th Schedule to the Constitution which contains 18 subjects on which municipalities shall have administrative control.

75. **The Seventy-fifth Amendment (1994)** effected certain changes in Article 223-B of the Constitution. It provided for establishment of tribunals for regulation and control of tenancy issues, including the rights, title and interests of landlord and tenants.
76. **The Seventy-sixth Amendment (1994)** brought the Tamil Nadu Reservation Act (which provided for 69 percent reservation in jobs and educational institution in the state) under the Ninth Schedule of the Constitution. This provided the bill protection from further judicial review.
77. **The Seventy-seventh Amendment (1995)** nullified the effect of the Supreme Court judgement in the Mandal Commission case in which the court held that reservations in promotions cannot be made. The amendment added a new Clause 4(a) to Article 16 of the Constitution which authorised the state to make any provisions for reservation in promotion in government jobs in favour of Scheduled Castes and Scheduled Tribes.
78. **The Seventy-eighth Amendment (1995)** inserted 27 Land Reforms Acts of various states in the Ninth Schedule of the Constitution. After this amendment, the number of Acts included in the Ninth Schedule rose to 284.
79. **Seventy-ninth Amendment** was carried out in 2000. It extended reservation for the Scheduled Castes and Scheduled Tribes for a further period of ten years, i.e. up to 25 January 2010.
80. **Eightieth Amendment** was carried out in 2000 to remove some anomalies in tax distribution. It made certain changes in the tax distribution provided under Articles 269, 270 and 272.
81. **Eighty-first Amendment** was carried out in June 2000. It did away with the limitation of 50 per cent reservation of the total vacancies imposed by the Supreme Court in Balaji Case (1963). The amendment

## Spardha Mithra coaching Centre

### Indian Polity and Governance

enables the government to fill the backlog of vacancies for the Scheduled Castes (15%) and Scheduled Tribes (7Y2 %), as these vacancies are to be treated as a separate class of vacancies to be filled in any succeeding year or years.

82. **Eighty-second Amendment** carried out in 2000, restored the relaxation in qualifying marks and standards of evaluation in both job reservation and promotions to the Scheduled Caste and Scheduled Tribes. This was set aside by the Supreme Court through its judgement in 1996. The Supreme Court had ruled that the relaxation in the matter of reservation was not permissible under Article 16(4) of the Constitution in view of the command contained in Article 335 of the Constitution.
83. **Eighty-third Amendment** carried out in 2000, amended Article 243-B with a view to exempt Arunachal Pradesh in the matter of statutory reservations for Scheduled Castes in village Panchayats as the State does not have any person belonging to that social class. It provided a new clause, (3A), which states that nothing in Article 243 relating to reservation of seats for the Scheduled Castes shall apply to the State of Arunachal Pradesh.
84. **Eighty-fourth Amendment** was carried out in 2001. It froze the number of representatives in the Lok Sabha (House of People) and State Assemblies at the current level for another 25 years viz. up to 2026.
85. **Eighty-fifth Amendment** was carried out in 2002. It allowed government employees belonging to the Scheduled Castes and Scheduled Tribes accelerated seniority consequent upon their elevation under the reservation rules with effect from June 1995. The amendment provided for 'consequential seniority' to the SCs/STs for promotion in government service by virtue of the rule of reservation.
86. **Eighty-sixth Amendment** was carried out in 2002. It made, free and compulsory primary education a fundamental right. It stipulated that the Government shall provide free and compulsory education to all children from the age of 6 to 14 in such a manner as the state may by law determine. Further, it seeks to compel parents to send their children to school by making it a Fundamental Duty under Article 51 A. The amendment also enjoins on the state to make endeavour to provide early childhood care and education to all children till they complete six years of age.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

87. **Eighty-seventh Amendment (2003)** made the 2001 census the basis for delimitation of constituencies of the Lok Sabha and the state legislatures. The amendment provided for readjustment of electoral:tonstituencies, including those reserved for Scheduled Castes and Scheduled Tribes on the basis of the 2001 Census without affecting the number of seats allocated to the states in the legislative bodies.
88. **Eighty-eighth Amendment (2003)** empowered the Centre to levy service tax and allowed both the Centre and the States to collect and appropriate this tax.
89. **Eighty-ninth Amendment (2003)** created National Commission for the Scheduled Tribes consisting of a Chairperson, Vice-Chairperson and three other members to be appointed by the President.
90. **Ninetieth Amendment (2003)** provided that for elections to the Legislative Assembly of Assam, the representation of the Scheduled Tribes and non-Scheduled Tribes in the constituencies included in the Badland Territorial Areas District shall be maintained.
91. **Ninety-first Amendment (2003)** debarred defectors from holding any public office as a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until fresh elections are held. The amendment also restricted the size of the Council of Ministers, both at the Centre and the state level, to 15 per cent of the total Lok Sabha/ Assembly members. However, in case of smaller states like Sikkim, Mizoram and Goa, where the strength of the Assemblies varies from 32 to 40 the minimum size of the Council of Ministers, including the Chief Minister has been fixed as 12.
92. **Ninety-second Amendment (2003)** added four new languages—Bodo, DoRri, Maithali and Santhali—to the 8th Schedule of the Constitution. With these additions the total number of languages in the 8th Schedule his risen to 22.
93. **Ninety-third Amendment (2005)** made a provision for reservation for the Scheduled Castes, Scheduled Tribes and OBCs in private unaided educational institutions. As a result of this amendment the private schools and other institutions would be brought under the reservation umbrella.
94. **Ninety-fourth Constitutional Amendment (2006)** This amendment exempted the state of Bihar from (he obligation of having a Tribal Welfare Minister. However, this provision was extended to the states of

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

Jharkhand and Chhattisgarh. It may be noted that this provision is already applicable to the states of Madhya Pradesh and Orissa.

95. **Ninety-fifth Constitutional Amendment (2009):** This amendment extends reservation for the Scheduled Castes, the Scheduled Tribes, the Anglo-Indians for a further period of ten years, i.e. upto January 2020.
96. **Ninety-sixth Constitutional Amendment (2011):** This amendment brings a change in the Eighth Schedule to the Constitution in entry 15, for the word "Oriya" the word "Odia" was substituted.
97. **Ninety-seventh Constitutional Amendment (2012):** After having obtained the assent of the President, this amendment makes changes in Article 19, in clause (1) C by inserting words "or cooperative societies" after the words "or unions". It brings changes in Part IV of the Constitution after 43A adds 43B, including, "the state shall Endeavour to promote voluntary formation. autonomous functioning. democratic control and professional management of cooperative societies." It also adds certain Part IXB relating to the organization and regulation of cooperative societies in Articles 243ZH to 243ZT.

### **5.5 Amendment Methods in India: Evaluation**

Between January 1950 and January 2012, over a period of about 62 years. there have been 97 amendments. made in the Constitution of India. roughly over one a half amendment per year on an average. The number of amendments suggests, if we compare the number of amendments in the United States of America (only 27 amendments over a period of more than two hundred years) that there have been too many amendments in India. During the first decade, there were only seven amendments between 1950 to 1959: in the second decade (1960-69), sixteen amendments, in the third decade (1970-79). twenty one amendments, in the fourth decade (1980-89). nineteen amendments; in the fifth decade (1990-99), there had been sixteen amendments and in the sixth decade (2000-09), there were made only sixteen amendments; and between 2010-12, two amendments; total 97 amendments over a period of sixty two years. Of these 97 amendments, more than seventy amendments were of temporary, technical and procedural matters which did not affect the nature of either India's polity,



## Spardha Mithra coaching Centre

### Indian Polity and Governance

though some of them were related to the creation of states or alterations in the nature of the states and some dealt with the welfare of the Scheduled Castes/Tribes or the extension of reservation facilities to be extended to them. Of these 97 amendments, another about twenty were made when there was the rule of the dominant Congress Party, until 1967. Another twenty amendments were made between 1977 and 1989, a period of unstable Centre. Another thirty amendments were made during the coalition government between 1989 and 2009. During a period of ten years, i.e. 1967 to 1977, there had been twenty five amendment — a period of intense political instability, a period that followed the 1965 Indo-Pak War, the Bangladesh crisis, the internal emergency period and of the Congress defeat at the Centre and the Janata Party rule in India. Of about two dozens remaining amendments, scattered over a period of sixty two years, are those which have dealt with three major concerns: one, those matters, important in their own right, over which the Indian political parties had the least differences among themselves. These included, for examples, amendment numbers 52 (concerning abolition of defection), 61 (concerning the reduction of voting age (relating to Panchayati Raj and Nagar Palikai Nagar Nigams etc.) and 86th (relating to 'right to education' ), 91st amendment concerning penalties on defections. The second types of amendments were those which related to the controversy relating to the interpretation of the Constitution between the Parliament and the Supreme Court, mostly relating to the right to property and the judicial review power. These amendments included (first) (abolition of Zamindari), 24th (superseding the Golak Nath decision —1967), **25th** (substituting the word 'amount' in place of 'compensation' in the wake of the bank nationalization), 26th (abolition of privy purses), **29th** (inclusion of some land reforms acts in the ninth schedule), 39th amendment (relating to the election disputes of some high profile offices), **42**nd amendment (concerning the power of the Parliament to amend the Constitution in the wake of the Kesavananda Bharati Case — 1973). Though the controversy between the Parliament and the Supreme Court has taken a back seat in the wake of the basic structure concept following the Kesavananda Bharati — 1973 and the Minerva Mills,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1980 and the Waman Rao-1981 cases, yet some of the amendments did see a conflict between the Parliament and the Supreme Court. The third type of amendments were those which witnessed the era of social change in the wake of developing nation as that of India. Various constitutional amendments have been enacted to bring about socio-economic changes. In fact, the Government had to take the help of Article 368 to implement agrarian reforms, soon after the launching of our Constitution. From the very beginning, many social legislations executive actions were held invalid by the Court. Consequently, the Constitution had to be amended to overcome the difficulties created by these judicial decisions. Every amendment has been brought about with some specific purpose. The amendments which aimed at ushering in a new egalitarian social order are the First, Fourth, Seventeenth, Twenty-fourth, Twenty-fifth, Twenty-sixth, Twenty-ninth, Thirty-ninth, Fortieth, Forty-second, Forty-fourth, Forty-seventh, Sixty-fifth and Seventy-third to Seventy-eight.

Opposing the decision of the Supreme Court in the *Kameshwar Singh v. State of Bihar* *Ramesh Thapar v. State* the abolition of Zamindari, the (First) amendment (1950) got secured the constitutional validity of abrogating the Zamindari and the Jagirdari system and added Schedule IX to preclude the judicial review of the acts. while also adding Article 31A and 31 B. The (Fourth) amendment did also the same thing by going against the Supreme Court's decision in *State of West Bengal v. Bela Banerjee*, *Dwarkadas Srinivas v. Sholapur Spinning Co. Ltd.* and the *State of West Bengal v. Subodh Gopal*. This amendment empowered the Government to take over commercial or industrial undertakings or other property in the public interest while including certain other Acts in the IX Schedule. The **17th** amendment further liberalized Article 31 A and added another 44 Acts in the IX Schedule to put them away from the judicial purview. The 24th amendment was passed to nullify the effect of the *Golaknath Case* authorizing the Parliament to exercise the power to amend the whole Constitution. including the fundamental rights. The 25th amendment was passed in the wake of the *Bank Nationalization case* while also stating that

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the laws passed to give effect the Directive Principles would not be considered against the fundamental rights. The 26th amendment was passed to abolish privy purses so to help transform the economic and social structure of the Indian Society. The 29th and the 34th amendments also came in the category of socio-economic changes in so far as they incorporate certain state Acts in the IX Schedule. The 39th and the 40th amendments add a few more state Acts in the IX Schedule to keep them above judicial scrutiny. The 42<sup>nd</sup> amendment was a comprehensive one which

(a) reasserted the supremacy of the Parliament in matters of amending the Constitution.

(b) added 'socialist' and 'secular' and 'integrity' in the Preamble

(c) incorporated the fundamental duties and

(d) established the supremacy of the directive principles — an amendment which added a socioeconomic element to the Constitution. The **44th** amendment deleted the right to property from the list of fundamental rights and made it a right under an ordinary law. The **47th** amendment added few other Acts in the IX Schedule. The **65th** amendment provided for the establishment of a multi-member National Commission for Scheduled Castes and Scheduled Tribes. The **66th** amendment added land reforms Acts passed by the State Governments to the IX Schedule. Amendments from 73th to 78th relate to the local rural-urban panchayat system alongwith those related to the Scheduled Castes (SCs) and the Scheduled Tribes (STs).

The above discussion clearly reveals the objects and purposes of enacting various constitutional amendments. Judicial invalidation of a good number of socio-economic legislative measures resulted in the enactment of aforementioned amendments. The Constitution was intended to bring about substantial changes. The 1947 Independence gave us political changes

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

while the amendments gave us and are giving us social and economic changes.

### **5.6 Basic Structure Doctrine**

The 'basic structure' doctrine emerged basically because of two prominent factors: one, when the Parliament began amending the Constitution too oftenly. second, when the Supreme Court began demonstrating shifting stances with regard to Parliament's power of amending the Constitution. Both the factors, indeed, were the cause and effect of each other. With the intentions of preserving the original ideals envisioned by the framers of the Constitution. the Supreme Court pronounced that the Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending powers vested in what constitutes the basic structure of the Constitution in the Kesavananda Bharati case (1973).

It would be instructive, indeed, to go into the background of the basic structure doctrine.

#### **(i) Position Before the Kesavananda Case**

The Constitution of India empowers both the Parliament and the state legislatures to make laws on subjects within their respective jurisdiction. This power is, indeed, not absolute because the judiciary according to the Constitution. has the power to adjudicate upon the constitutionality of all laws, and in the process, declare any law ultra vires if they go against the Constitution. This is what is the power of judicial review. But the framers of the Constitution wanted to make the Constitution an adaptable document and hence gave the Parliament the power to amend the Constitution so to ward off the judiciary in matters relating to the amendments made in the Constitution. The pre-Kesavananda position was that the Supreme Court. at one stage of time in Shankri Prasad Singh Deo v. Union of India case in 1951 and Sajjan Singh v. T he Suite of Rajasthan case in 1965) upheld the power of the Parliament lo amend any part of the Constitution including the fundamental rights. In 1967. an eleven-judge bench of the Supreme Court reversed its postition when in the Golaknath v. The State of Punjab case,

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

the apex court declared that the Parliament cannot amend any Article, including the fundamental rights of the Constitution and that Article 368 specified the procedure of amendment only and that it did not give the Parliament any power to amend the Constitution. Through a spate of amendments made between July 1971 and June 1972 (24th and other amendments), the Parliament restored for itself the absolute power to amend any part of the Constitution including Part III, dealing with fundamental rights. Even the President was made duty bound to give his assent to any amendment bill passed by both the Houses of the Parliament.

**(ii) Emergence of the Basic Structure Concept—the Kesavananda Case**

Inevitably, the constitutional validity of the above amendments was challenged before a full bench of the Supreme Court (thirteen judges). Their verdict can be found in eleven separate judgments. Nine Judges signed a summary statement which records the most important conclusions reached by them in this case. Granville Austin notes that there are several discrepancies between the points contained in the summary signed by the judges and the opinions expressed by them in their separate judgments. Nevertheless, the seminal concept of 'basic structure' of the Constitution gained recognition in the majority verdict. All judges upheld the validity of the twenty-fourth amendment saying that the Parliament had the power to amend any provision of the Constitution. All signatories to the summary held that the Golaknath case had been decided wrongly and that Article 368 contained both the power and the procedure for amending the Constitution. Seven of the thirteen judges in the Kesavananda Bharati case, including Chief Justice Sikri who signed the summary statement, declared that Parliament's constituent power was subject to inherent limitations. Parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the basic structure or framework of the Constitution.

**(iii) Basic Structure of the Constitution according to the Kesavananda Verdict**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Each judge laid out separately, what he thought were the basic or essential features of the Constitution. There was no unanimity of opinion within the majority view either. **Chief Justice Sikri** explained that the concept of basic structure included:

- Supremacy of the Constitution
- Republican and democratic form of government
- Separation of powers between three organs of the government
- Federal character of the Constitution

**Justice Shelat** and **Justice Grover** added two more: a mandate to create a welfare state contained in the Directive Principles and unity and integrity of the nation.

**Justices Hegde and Mukherjee** gave a separate list:

- Sovereignty of India
- Democratic character of India's polity
- Essential features of the individual freedoms secured to the citizens
- Mandate to build a welfare state

Justice Jagmohan Reddy includes the Preamble and the following in the basic features:

- Sovereignty, democratic, republic
- Parliamentary democracy
- Three organs of the State

He said that the Constitution would not be itself without the fundamental freedoms and the directive principles. Only six judges on the bench (therefore a minority view) agreed that the fundamental rights of the citizens belongs to the basic structure and Parliament could not amend it.

The minority view delivered by **Justice A.N. Ra:s**, **Justice M.H. Beg**, **Justice K.K. Mathew** and **Justice S.N. Dwivedi** also agreed that Golaknath had been decided wrongly. They upheld the validity of all three amendments challenged before the Court. Justice Ray held that all parts of the Constitution were essential and no distinction could be made between its essential and non-essential parts. All of them agreed that Parliament

Spardha Mithra coaching Centre  
Indian Polity and Governance

could make fundamental changes in the Constitution by exercising its power under Article 368.

**(iv) Basic Structures Concept Reaffirmed—the Indira Gandhi Election Case**

In 1975, the Supreme Court again had the opportunity to pronounce on the basic structure of the Constitution. A challenge to Prime Minister Indira Gandhi's election victory was upheld by the Allahabad High Court on grounds of electoral malpractice in 1975. Pending appeal, the vacation judge—Justice Krishna Iyer, granted a stay that allowed Smt. Indira Gandhi to function as Prime Minister on the condition that she should not draw a salary and speak or vote in Parliament until the case was decided. Meanwhile, Parliament passed the **Thirty-ninth Amendment** to the Constitution which removed the authority of the Supreme Court to adjudicate petitions regarding elections of the President, Vice-President, Prime Minister and Speaker of the Lok Sabha.

Amendments were also made to the Representation of Peoples Acts of 1951 and 1974 and placed in the Ninth Schedule along with the Election Laws Amendment Act, 1975 in order to save the Prime Minister from embarrassment if the apex court delivered an unfavourable verdict. The malafide intention of the government was proved by the haste in which the Thirty-ninth Amendment was passed. The bill was introduced on August 7, 1975 and passed by the Lok Sabha the same day. The Rajya Sabha (Upper House) passed it the next day and the President gave his assent two days later. The amendment was ratified by the state legislatures in special Saturday session. It was gazetted on August 10.

Four out of five judges on the bench upheld the Thirty-ninth Amendment, but only after striking down that part which sought to curb the power of the judiciary to adjudicate in the current election dispute. One judge, Justice Beg, upheld the amendment in its entirety. Mrs. Gandhi's election was declared valid on the basis of the amended election laws.

Spardha Mithra coaching Centre  
Indian Polity and Governance

**(v) Basic Features of the Constitution according to the Election Case**

**Verdict**

Again, each judge expressed views about what amounted to the basic structure of the Constitution. According to Justice H.R. Khanna, democracy is the basic feature of the Constitution and includes free and fair elections. Justice K.K. Thomas held that the power of judicial review is an essential feature.

Justice Y.V. Chandrachud listed four basic features which he considered unamendable:

- sovereign democratic republic status
- equality of status and opportunity
- secularism and freedom of conscience and religion
- government of laws and not of men i.e., the rule of law

Despite the disagreement between the judges on what constituted the basic structure of the Constitution, the idea that the Constitution had a core content which was sacrosanct was upheld by the majority views.

**(vi) Basic Structure doctrine Reaffirmed—The Minerva Mills and Waman Rao Cases**

Within less than two years of the restoration of Parliament's amending powers to near absolute terms, the forty-second amendment was challenged before the Supreme Court by the owners of the Mineva Mills (Bangalore), a sick industrial firm which was nationalised by the government in 1974.

Chief Justice Y.V. Chandrachud, delivering the majority judgment (4 :1), upheld the power of judicial review of constitutional amendments. It maintained that clauses (4) and (5) of Article 368 conferred unlimited powers on Parliament to amend the Constitution. It said that this deprived courts of the ability to question amendment even if it damaged or destroyed the Constitution's basic structure.

The judges, who concurred with Chandrachud, C.J. ruled that a limited amending power itself is the basic feature of the Constitution.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

In another case ( Waman Rao v. Union of India. 1981) relating to a similar dispute involving agricultural property, the apex court held that all constitutional amendments made after the date of the Kesavananda Bharati judgment were open to review in the court. They can be challenged on the ground that they are beyond Parliament's constituent powers or that they have damaged the basic structure of the Constitution. In essence, the Supreme Court struck a balance between its authority to interpret the Constitution and Parliament's power to amend it.

The Constitution does not give any definitive list of what constitutes the basic structure. What appears in different decisions and in the views of the numerous judges is only illustrative and not exhaustive. In *Vijayraj G. v. Union of India - 2007*, it is said: "Basic structures are systematic principles underlying and connecting provisions of the Constitution's. They give coherence and durability to the Constitution. These principles are part of the constitutional law even if not expressly stated. This doctrine is based on the concept of Constitution identity. The main object behind the basic structure theory is continuity and within that continuity, of identity. It is the court which will determine the basic structure on the basis of facts in each case that comes before it."

In conclusion it may be said that such a thing as a basic structure to the Constitution is something which is well established and its contents cannot completely be determined with any measure of finality until a judgment of the Supreme Court spells it out. Nevertheless, the sovereign, democratic and secular character of the polity, rule of law, independence of the judiciary, fundamental rights of citizens etc. are some of the essential features of the Constitution that have appeared time and again in the apex court's pronouncements. One certainty that has emerged is that all laws and constitutional amendments are now subject of judicial review and that the laws which transgress the basic structure, are likely to be struck down by the Supreme Court. Indeed, the Parliament's power to amend the Constitution is not absolute and the Supreme Court is the final arbiter, and interpreter of all constitutional amendments.

## 6. FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

### 6.1 Fundamental Rights

Rights are, Laski says. claims of social life, without which no man can seek to be at his best self. They help individuals develop their personality: they are claims on others. on society; they emanate from our membership of the society we are members and as such are rewards for our obligations to others; they are always social. and are never against the society, above it or before it. The state recognizes our rights. maintains. and protects them.

The Constitution of India. in Part III (Articles 12 to 35) provides fundamental rights, and Part IV A (Article, 51 A), inserted in the Constitution through 42<sup>nd</sup> Amendment (1976), deals with fundamental duties of the Indian citizens.

The importance of the fundamental rights can hardly be denied. Emphasizing their significance. Justice Bhagwati, in *Menaka Gandhi v. Union of India* case, had said that "these fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to perfect the dignity of the individual and create conditions in every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights, and impose negative obligations on the state not to encroach on individual liberty in its various dimensions." Rights are essential for our perfection (see *Moti Lal V. State of Uttar Pradesh*, 1951) as they are not gifts of the state to its citizens, but are those which confirm their existence and give them perfection (See *Nagraj v. Union of India*. 2007).

The concept of fundamental rights in the Indian Constitution derives its inspiration from **numerous historical documents** such as Britain's Bill of Rights. the American Bill of Rights, and the French Declaration of the Rights of Man. During the national movement, an All-Parties Conference proposed, in 1928. certain constitutional reforms. The Nehru Committee—an eleven-member Committee headed by Motilal Nehru—suggested a list of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

fundamental rights, including the rights for religious and ethnic minorities and others seeking to limit government's powers. In 1931, the Indian National Congress, at its Karachi session, adopted resolutions defining as well as committing itself to defend fundamental civil rights, including socioeconomic rights, such as minimum wages and the abolition of untouchability and 'serfdom'. Committing themselves to socialism in 1936, leaders of the Congress Party drew examples from the Soviet Constitution, which called for fundamental duties of citizens to serve as a means of collective, patriotic responsibility.

The **Constituent Assembly** was convinced that a list of **constitutional rights** should be a part of the Constitution for reasons such as

- (a) the Executive needs to be prevented from acting arbitrarily;
- (b) socioeconomic justice needs to be achieved by ensuring certain objectives: and
- (c) minority groups need to be assured of the protection of their interests.

The liberal school, represented by K.M. Munshi, A.K. Ayyar, and Thakurdas Bhargava in the Constituent Assembly, sought negative rights, i.e., liberties against the possible onslaughts of the government. The democratic left school, represented by men like K.T. Shah, Damodar Swamp, and V.P. Tripathi, suggested positive rights, i.e., guaranteed socioeconomic rights for the common man. A sub-committee, headed by Sardar Patel, decided to draw a distinction between justiciable rights and non-justiciable rights. Two schools emerged: one, seeking to incorporate as many rights as possible, enforceable in the court of law; another, seeking to restrict fundamental rights to a few essential things: with the former favouring justiciable rights and the latter favouring non-justiciable rights. Thus, there emerged two parts in the Constitution : Part III and Part IV dealing with the Fundamental Rights and the Directive Principles of State Policy respectively : Fundamental rights as the soul of the Constitution and the Directive Principles as the conscience of the Constitution.

If we have a glance on Part III of the Constitution, we will have the following fundamental rights:

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

1. **Right to Equality** : Equality before law and equal protection equality before law (Article 14)  
  
Prohibition of discrimination on any ground whatsoever (Article 15) Equality of opportunity in employment (Article 16)  
  
Abolition of untouchability (Article 17 )  
  
Abolition of titles (Article 18)
2. **Right to Freedom** :Speech and expression. assembly. movement, residence, settlement. profession (Article 19)  
  
Protection in respect of conviction for offences (Article 20)  
  
Protection of life and personal liberty (Article 21)  
  
Protection against arrest and detention in certain cases (Article 22)
3. **Right against:** Prohibition of traffic in human Exploitation beings and forced labour (Article 23)  
  
Prohibition of employment of children in hazardous employment (Article 24)
4. **Right to Freedom** : Freedom of conscience and free of Religion profession (Article 25)  
  
Freedom to manage religious affairs (Article 26)  
  
Freedom as to payment of taxes for promotion of any particular religion (Article 27)  
  
Freedom as to attendance at religious instructions in certain educational institutions (Article 28)

## Spardha Mithra coaching Centre

### Indian Polity and Governance

5. **Cultural and:** Protection of language, script or Educational culture of minorities (Article 29)  
Rights Right of minorities to establish and administer educational institutions (Article 30)
6. **Right to Property :** Repealed through 44th amendment (1978) (Article 31)
7. **Right to:** Remedies for encroachment of the Constitutional fundamental rights conferred by this Remediespart. The courts are authorized to issue writs such as habeas corpus, mandamus, prohibition, certiorari and quo warranto (Article 32)

The analysis of the fundamental rights speaks more than their importance. The fundamental rights, guaranteed to the Indian citizens as incorporates in Part 111 of the Constitution, constitute individual rights common to most people in democracies. They are enforceable in a court of law, i.e., their violations result in punishments. These rights are not absolute: they are exercised within the framework of the provisions of the Constitution (see A.K. Gopalan v. State of Madras-1950). They help us to remove or reduce inequalities as witnessed in social practices. specially untouchability. They prohibit discrimination on grounds of religion, race, caste, sex, region, or place of birth. They forbid bonded labour and human trafficking. They protect and promote the interests of minorities; religious, cultural, and ethnic. They guarantee us freedom as also the right to life and personal liberty. What is more is that they provide remedies, i.e. if they are violated, courts can be approached to protect and safeguard these rights. They ensure "a government of laws, and not of men, establishing, thus, a rule of law.

The fundamental rights are both **natural** as well as **legal**: natural, in the sense that they are necessary for the promotion of our personality; legal in the sense that they are binding upon every government — central, provincial, district and local. The fundamental rights are both claim rights

## Spardha Mithra coaching Centre

### Indian Polity and Governance

as well as liberty rights: **claim rights**, in the sense that every citizen must be in a position to claim them: rights are our claims on others **liberty rights**. in the sense that they assure us of certain liberties of thought, expression, assembly, association, movement and vocation and the like. The fundamental rights are both **negative** as well as **positive**: negative in the sense that they enforce limitations on authorities; positive in the sense that they provide facilities and amenities to promote our interests. The fundamental rights are both **individual** as well as **group** rights: individual rights because some rights relate to individuals such as: equality, liberty, freedom of individual religion, group rights, because some of them relate to groups, like religious, cultural, and ethnic minorities, these groups through which the people are able to protect and promote their interests.

A general glance at Part III of the Constitution reveals a couple of salient features in our scheme of fundamental rights. Firstly, the fundamental rights have been projected as some kind of limitations on the powers of the legislature and the executive in so far as Article 13 forbids the state to make any law contrary to the provisions of Part III, and if it does so. such a law would be void. The Article implicitly states that it would be for the courts to declare such a law void. Incidentally, the Supreme Court has been able to state its position clearly in cases like the Kesavananda Bharati and Minerva Mills. Secondly. the right to property, which was a fundamental right till the enactment of the 44th Amendment (1978), has been converted into a legal right. Thirdly. the scope of operation of fundamental rights has been made limited by Article 31 A (except laws providing for acquisition of estates, etc.), Article 31B (validation of certain acts and regulations included in the Ninth Schedule), and Article 31 C (except laws giving effect to certain directive principles). Fourthly, with the inclusion of fundamental duties, Part IVA has, in a way, minimized the emphasis which was laid on the fundamental rights. Indeed, the fundamental duties are not enforceable by the court nor is their violation punishable. Yet a court can refuse to enforce a fundamental right of an individual who has patently violated the duties. Fifthly, the fundamental rights in the Indian Constitution have been, indeed, exhaustively stated: each right has been enumerated in what it

## Spardha Mithra coaching Centre

### Indian Polity and Governance

means, as clearly as possible. Sixthly, the amenability of fundamental rights had been a contentious for a long time. The right of Parliament to amend the Constitution has been upheld by the judiciary, but the fundamental rights have also been made a part of the basic structure. Seventhly, the chapter on fundamental rights makes a distinction between citizens and persons; Though all citizens are persons, all the persons are not citizens; for example aliens are persons but they are not citizens. Article 14 uses the word 'person' (equality before the law or equal protection of the law), but Article 15 uses the word 'citizen' (the states shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them). Eighthly, right to education has been made a part of fundamental rights under Article 21 A. Ninthly, fundamental rights (except those in Articles 19, 20 and 21) can be suspended during the operation of national emergency. Tenthly, Article 35 states that a few rights (as in clause (3) of Article 16, clause (3) of Article 32, Articles 33 and 34) are enforceable by the law of Parliament and not of state legislatures.

Fundamental rights are enforceable and amendable. The courts have special responsibility to protect fundamental rights, which they perform by issuing writs. Though the fundamental rights, or some parts of them can be suspended during periods of emergency under Articles 352 and 356, they can be amended by the Parliament. In the *Shankari Prasad v. Union of India* (1951) the constitutional validity of the first amendment (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of Parliament to amend the Constitution under Article 368 also included the power to amend the fundamental rights. In the *Golaknath v. State of Punjab* (1967), the Supreme Court held that the fundamental rights are immutable and hence the Parliament cannot abridge or take away any of fundamental rights. Reacting to the 1967 case, the Parliament enacted the 24th Amendment (1971) asserting that the Parliament can abridge or take away fundamental right, and that it has the power to amend the Constitution, including the fundamental rights. In the *Kesavananda Bharati v. State of Kerla* (1973) case, the Supreme Court upheld the validity

## Spardha Mithra coaching Centre

### Indian Polity and Governance

of the 24th Amendment, saying that the Parliament can abridge or take away the fundamental rights by amending the Constitution. But the apex court ruled that the amending power of the Parliament does not enable it to alter the 'basic structure' of the Constitution. The 42nd Amendment (1976) authorized the Parliament to amend any part of the Constitution and that no amendment could be questioned in any court. The Supreme Court, in the *Minerva Mills v. Union of India* (1980) and the *Waman Rao* (1981) cases, adhered to the doctrine of "basic structure" as something out of the domain of Parliament, though the Parliament does possess the power of amending the Constitution.

The fundamental rights, incorporated in the Constitution, have helped raise numerous issues which have led the High Courts/Supreme Court resolve them by way of interpretation and also by way of extending their widest possible meaning. A brief, though not exhaustive illustration, can be stated here to make the point clear.

Right to Equality has five Articles: 14, 15, 16, 17 & 18.

- (i) **Article 14:** which lays emphasis mainly on equality before law and equal protection of law resolves issues relating to this Article: (a) Ban on sex selection is not violative of Article 14. A pregnant woman who does not want to bear a child of a particular sex can not be equated with another pregnant woman who wants to terminate pregnancy on reasons laid down under the Medical Termination of Pregnancy Act (see *Vijay Sharma v. Union of India — 2008*); (b) Equal pay for equal work while equally placed in all respects is not violative of Article 14 (see *Uttar Pradesh Sugar Corp & Ltd. v. Sant Raj Singh — 2006*), (c) if unequals are treated equally and equals are treated unequally (see *John Vallamattom v. Union of India — 2003*), it constitutes a violation of Article 14). (d) The Constitution does provide special facilities to the weaker sections of society and this does not violate Article 14 of the Constitution, but if the creamy layers are treated at par with forward classes, any special benefit to people of creamy layers would go against Article 14 (see *Indra Sawhney v. Union of India — 2000*).



## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (ii) **Article 15:** prohibits discrimination on grounds of religion, race, caste or sex, place of birth or any of them. It does not mean that a person by reason of marriage alone cannot ipso facto become a member of Scheduled Caste or Scheduled Tribes (see *Meera v. Sunita* — 2006). But children born to inter-caste marriage of which either father or mother belongs to Scheduled Caste-SC/Scheduled Tribes-ST category can claim reservation benefits only on proof that they are subjected to some handicaps and disadvantages having been born as members of SC/ ST (see *M.S. Valsala v. State of Kerala* — 2006). It may be remembered that sex harassment of working women amounts to violation of the rights guaranteed by Articles 14 and 15 (see *Vaishakha v. State of Rajasthan*, 1997).
- (iii) **Article 16:** provides for equal opportunity in matters of employment while 77th amendment (1995), extending the argument in the case of *Indira Sawhney v. Union of India* — 1992, extends the facilities of reservation in promotion for the Scheduled Castes/Scheduled Tribes by adding Clause 4 A to Article 16.
- (iv) **Article 17:** abolishes untouchability as an offence punishable in accordance with law; the Protection of Civil Rights Act, 1955 replaces the earlier title "the Untouchability (Offences) Act, 1955. The law passed by the Madras Government while constructing a colony for untouchables was not accepted in a case *Pavadai v. State of Madras*, 1973.
- (v) **Article 18:** does not confer any title except one that is military or academic. It may be stated that awards such as Bharat Rata, Padma Vibhushan, Padma Bhushan and Padma Shri would not amount to 'title' and that these would neither be used as suffixes or prefixes (see *Balaji Raghavan v. Union of India* — 1996).

**Right to Freedom** has four Articles: 19, 20, 21 & 22.

- (vi) **Article 19:** refers to six freedoms granted to all the citizens: these freedoms are, of speech and expression, to assemble peacefully and without arms, to form associations or unions, of movement throughout the territory of India, of residence and settlement in any part of India, and to practice any profession, trade or business. These freedoms are not absolute and are to be exercised in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with

## Spardha Mithra coaching Centre

### Indian Polity and Governance

foreign states, public order, decency or morality or in relation to contempt of Court. defamation or incitement to an offence. The restrictions have to be reasonable. And yet, a person suffering from AIDS can be (Lucy v. State of Gao — 1990) restricted; while ban on slaughter of bulls below 16 years of age would be a reasonable restriction, but total ban would be unreasonable, (Hasmmattulah v. State of Madhya Pradesh, 1996). The reasonableness of a restriction is to be tested by the judiciary and not by the legislature (see Chintamani Rao v. State of Madhya Pradesh — 1951). But the unreasonableness of a restriction has not to be arbitrary or of an excessive nature. The essence of 'reasonable restrictions' has to be one where the right has to be available to the citizens.

The Supreme Court has told that the freedom of speech and expression, (Romesh Thapar v. State of Madras — 1950) is indispensable in a democracy and that the term, 'speech and expression' include freedom of press. In Prabhu Dull v. Union of India — 1982, the Supreme Court had stated that the right to know is a part of freedom of press (which like any other right is not absolute) granting citizens right to information. In a different, but in an another important case, the Communist Party of India (M) v. Bharat Kumar — 1998. the Supreme Court had told that "Bundhs are illegal as they deprive other citizens from enjoying their fundamental rights, especially under article 19."

The freedom of assembly, under Article 19(1) (b), has certain restrictions: it has to be peaceful. it has to be unarmed (unlike in the USA where the citizens can keep and bear arms) and it has to be exercised under reasonable restrictions. But when a lawful assembly becomes unlawful, it can be dispersed (Dasappa v. pr. Additional Commissioner - 1960). It may be remembered that freedom of assembly includes right to hold meetings and take out processions. The freedom to form associations includes the right to form companies, societies, partnership, trade unions and political parties. The right to form an association is a fundamental right but recognition of association is not a fundamental right, though once recognized, the recognition cannot be subsequently revoked: the right to form association

## Spardha Mithra coaching Centre

### Indian Polity and Governance

implies right to continue in the association (see *Delhi Police Non-Gazetted Karamchari Sangh v. Union of India - 1987*). In forces. they do not enjoy the right to form associations under Article 33 and its activity is violative of Article 19(1)(e) (see *O.K.A.Nair v. Union of India - 1976*). A government employee has the fundamental right to form an association, be a unionist as also a Railway employee, but he has no fundamental right to continue in the Railways (see *Balakotiah v. Union of India - 1958*). However, the right to form associations can be exercised under reasonable restriction as contained in Article 19(4). The freedom to movement, under Articles 19(1)(d) and 19(5), guarantees to all citizens of India the right to move freely throughout the territory of India is subject to reasonable restrictions mentioned in clause 5 of Article 19. The main object of this freedom is that entire territory is one unit so far as the citizens are concerned (see *N.B.Khare v. State of Delhi - 1961*). The Supreme Court held the view that the right to movement of prostitutes may be restricted on grounds of public health and in the interest of public morality (see *State of Uttar Pradesh v. Kaushalya - 1963*). The requirement of wearing helmet is not a restriction on free movement of citizens (for the people of Sikh community, it is an exceptional). This reasonable restriction is to save one's life, especially of the one who is driving scooter or motorcycle.

The freedom of residence. under Article 19(1)(e) and 19 (5), is granted to every citizen so to reside and settle in any part of the country. The order to remove prostitutes, as in the case of *State of Uttar Pradesh v. Kaushalva - 1963* under the suppression of Immoral Traffic in Women and Girls Act. 1956. and *Ibrahim Wazir v. State of Bombay. under the Foreign Acts of 1964 and 1966*, asking the foreigners to leave the country during emergencies, do not constitute freedom of residence.

The freedom of profession. occupation, trade or business, under Article 19(1)(g) and 19(6). is guaranteed to every citizen and is restricted and regulated by authority of law. The right to carry on business does not mean right to close it, especially. it can not be closed in the interest of general public (see *ace/ Wear v. Union of India - 1979*) nor does it ensure right to

## Spardha Mithra coaching Centre

### Indian Polity and Governance

work (see Fertilizer Corporation of Kamgar Union v. Union of India - 1981). Indeed, a citizen has a fundamental right to trade or business. but there is no fundamental right in activities which are immoral, anti-social, anti-national, criminal or trade in articles or goods which are obnoxious and injurious to health, safety and welfare of general public. The Supreme Court held that the state lotteries are not only trade or business. but gambling (see Mi's B.R.Enterpries v. State of Uttar Pradesh - 1999). Likewise the sale of pan masala and gutka and liquor to under-aged is violative of article 19(1)(g) (see Godawant Pan ,Masala Products Pvt. Ltd. v. Union of India - 2004).

**(vii) Article 20:** The Constitution of India provides the following safeguards to the persons accused of crimes:

- (a) No person can be convicted for viloation of law in force at the time of the commission of the act.
- (b) No person shall be punished for the same offence more than once, and
- (c) No person shall be compelled to be a witness against himself.

In case of (a), the legislature can make prospective as well retrospective laws, though the law prohibits retrospective criminal laws to be made by the legislature. the exception is the imposition of civil liability retrospectively (Hathi Singh Manufacturing Co. v. Union of India - 1960): a tax be imposed retrospectively (Sun-dram Iver & Co. v. State of Andhra Pradesh. 1958). In case of b), what is made clear is that the offence be an act punishable by law, the prosecution must have taken place before a Court. the accused must have been duly punished. and the offence must be the same for which he was punished. In case of c), it is a protection against compelling a person to be an evidence against one self (MP. Sharma v. Satish Chandra - 1954 or Narain Lal v. M.P. Mistty-1961).

**(viii) Article 21:** reads "no persons shall be deprived of his life or personal liberty except according to procedure established by law". The word 'person' is not confined to only citizen but extends to every person

## Spardha Mithra coaching Centre

### Indian Polity and Governance

regardless of nationality and to those who are undergoing imprisonment in jails: a prisoner does not lose his rights merely because he is convicted and imprisoned. The word 'deprived' amounts to interference with the freedom of a person (visiting by the police at night, right of the prisoner to get restricted/interfered, total loss - .4.K. Gopalan v. State of Madras - 1950. restrictions on 'personal liberty' - Kharak Singh v. State of Uttar Pradesh 1963. direct and tangible threat on the life of a person - Ramshara v. Union of India - 1989). The word 'life' used in Article 21. is more than the mere survival or animal existence (see Francis v. Union Territory Delhi - 1981) and that it includes right to live with human dignity. Added to it the right to life came to include right to minimum subsistence during suspension (Chandrabhan's Case, 1983), right of a person not to be subjected to bonded labour or to unfair labour conditions (People's Union v. Union of India - 1982). right to livelihood by means which are not illegal, immoral, or opposed to public property (DTC v. Mazdoor - 1991 ). right to immediate medical aid to every patient (Parmanand v. Union of India 1989). The word 'personal liberty' includes various kinds of rights like right to locomotion, right to travel abroad, right of a prisoner to speedy trial (Hussainara Khatoon v. Home Secretary- 1979). right to privacy, right against solitary confinement, right against handcuffing, right against delayed execution. right to shelter. right against custodial death, right against public hanging (Unni Krishna v. State of Andhra Pradesh - 1993). The expression 'procedure established by law' means procedure established by law which implies that the law be made by a competent authority/legislature and the said law should not violate any other fundamental right (A.R.Antulay v. Naik - 1988) and should be fair, just and reasonable (Maneka Gandhi v. Union of India - 1978).

The smallest Article, with number 21, has only eighteen words but all the words read together have the greatest significance. Some of its significance has been explicitly stated above with relevant cases which signify not only the rights as they appear. they also propound the issues which have been **raised** and **answered**. Still, some other cases

## Spardha Mithra coaching Centre

### Indian Polity and Governance

decided by the courts are given to highlight the importance of **issues** relevant to Article 21:

- (i) Smt. Akhtai Bi v. State of Madhya Pradesh - 2001: in this case. it was observed that to have speedy justice is a fundamental right which flows from Article 21.
- (ii) Uday Mohanlal Acharya v. State of Maharashtra-2001: In this case, it was stated that detention beyond the prescribed period, without a challan being held. means an action against the provisions of Article 21
- (iii) In M.C.Mehta v. Union of India - 2001: it was ordered that all the buses operating in Delhi be converted to CNG fuel mode so to safeguard the health of the people of Delhi.
- (iv) In the case Murali S Deora v. Union of India - 2001. it was decided that smoking in public places should be banned. for it is harmful for non-smokers who keep moving in public places and are likely to get afflicted to various diseases such as lung cancer and heart attack.
- (v) State of Punjab v. Ramdev Singh - 2004: It was observed in this case that rape was violative of the right to life and has to attract stern punishment.
- (vi) In Chameli Singh v. State of Uttar Pradesh - 1996. the Supreme Court had declared that people should be assured of all facilities to develop themselves and that the human rights be designed to achieve development: "Right to life granted in any civilized society implies right to food. water. decent environment, education and medical care and shelter".
- (vii) In Board of Trustees of the Port of Bombay v. Dilip Kumar - 1983, the Supreme Court had held that the right to life guaranteed by Article 21 included the right to livelihood. Such a decision was confirmed in a later case. Olga Tellis v. Bombay Municipal Corporation-1986.
- (viii) In Mohini Jain v. State of Karnataka -- 1992. the Supreme Court had declared that right to education flows directly from the right to life. In a later amendment, (86th amendment. 2002) right to education was added with Article 21 A.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (ix) In the case of *Vishaka v. State of Rajasthan - 1997*, the Supreme Court had held that the sexual harassment of a working woman at her place of work amounts to violation of Article 21.
- (x) In *Vincent v. Union of India - 1987*, it was observed that the right to life includes right to health. In yet another case, *Parmanand Katara v. L-111011 of India - 1989*, the Supreme Court had held: "It is the duty of the doctors to preserve life whether the concerned person be a criminal or an innocent". Additionally, the apex court stated: "Article 21 of the Constitution casts an obligation on the State to preserve life".
- (xi) In *CERC v. Union of India - 1995* it was held that right to human dignity includes right to health, medical aid to protect the health and vigor of a worker while in service or post retirement is a fundamental right under Article 21, i.e. right to health of labour.
- (xii) The Supreme Court in *Vikram Dev Singh Tomar v. State of Bihar - 1988*, and in *Upendra Baxi v. State of Uttar Pradesh - 1987* cases, had emphasized on protection and well being of the weaker sections of society as parts of the right of life.
- (xiii) In *Chameli Singh v. State of Uttar Pradesh - 1996*, the Supreme Court observed that right to shelter includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air, electricity and sanitation, and does not merely mean a right to roof over one's head.
- (xiv) In *Sztbhash Kumar v. State of Bihar - 1991*, the apex court had held that enjoyment of pollution free environment is included in the right to life under Article 21

**Article 22** deals with protection against arrest and detention. It reads

(1) no person, who is arrested, shall be detained in custody, without being informed as soon as may be, of the grounds for such arrest nor shall be denied the right to consult, and to be defended by a legal practitioner of his choice;

(2) Every person who is arrested and detained in custody, shall be produced before the nearest magistrate, within a period of twenty-four

## Spardha Mithra coaching Centre

### Indian Polity and Governance

hours of such arrest... and no such person shall be detained in custody beyond the said period without the authority of a magistrate;

(3) nothing in clause (1) and (2) shall apply- (a) to any person who for the time being is an enemy alien, or (b) to any person who is arrested or detained under any law providing for preventive detention;

(4) no law providing for preventive detention shall authorize the detention of a person for a longer period prescribed by the law of the Parliament while the person so detained would have with him the right of representation. Thus, this Article consists of two parts: Clause (1) and (2) apply to persons arrested or detained under a law other than the preventive detention. and other clauses apply to persons arrested or detained under a preventive detention law. Under Article 22, an arrested person has the right to be informed of the grounds of his arrest (see *Joginder Kumar v. State of Uttar Pradesh — 1994*) and also has the right to have free legal services (*Hussainara Khatoon v. Home Secretary. Bihar (1979)*). Such a person has the right to be produced before a magistrate and also has the right not to be detained beyond 24 hours except by the order of the magistrate. The Preventive Detention Laws have come up from time to time so to ease the position for the detenu. Some of these are the Preventive Detention Act 1950 which was to cease in its effect in 1951. though its life was extended till 1969. In 1971, the Preventive Detention Law got revived in the form of the Maintenance of Internal Security Act (MISA) which continued to be in operation till 1977. Though the MISA was repealed in 1978. but appeared within a period of two years. In 1980, the President issued an ordinance known as the National Security Act (1980) which has now become a law (see *A.K.Rov v. Union of India —1982*) (providing for preventive detention of persons responsible for communal and caste riots. The Terrorist and Disruptive Activities (Preventive) Act — TADA was passed in 1987 for dealing with the terroristic activities. However, the constitutional safeguards against detention laws including TADA have been provided so to minimize its misuse. In any case, the detent



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

has the right to make a representation against the detention order (see *Lawrence D Souza v. State of Bombay — 1956*).

**(x) Right against Exploitation** has two Articles : 23 and 24

**(x)(i). Article 23** prohibits traffic in human beings and begar and other similar forms of forced labour and also states that any contravention of this provision would be an offence punishable in accordance with law. The second part of this Article permits the state to impose any compulsory service for public service and in doing so, the State would not discriminate on grounds of religion, race, caste or class and the like. This Article protects the individual not only against the State but also against other individuals. It regards 'traffic in human beings and 'began', forced labour as constituting exploitation. It may, however, be remembered that this protection is available to both the citizens as well as aliens. The Supreme Court has widened the meaning of 'begar' /forced labour in its numerous decisions: 'begar' being a form of forced labour where a person is compelled to work without receiving any remuneration (see *People's Union for Democratic Rights v. Union of India —1982*). In *Sanjit Rov v. State of Rajasthan — 1983*, the apex court held that the payment of wages lower than the minimum wages is violative of Article 23. Similarly, the labor taken from prisoners without paying proper remuneration is an example of 'forced labour' and thus is against Article 23 (see *Deena v. Union of India, 1983*). In *Bandhua Mukti Morcha v. Union of India, 1983*, the Supreme Court held that the public interest litigation case highlighting the bonded labor problems be encouraged by the government. However, the compulsory military service or social service, imposed by the State, are neither begar nor traffic in human being (see *Dula! Samanta v. D. M.Howrah, 1958*).

**(x)(ii). Article 24** prohibits the employment of children to work in any factory or mine or engaged in any other hazardous employment. In

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Labourers Working on Sala! Hydro Project v. State of Jammu and Kashmir — 1984, the apex court has reiterated the principle that construction work is a hazardous employment and that children below 14 years cannot be employed in this work. In another case, M.C. Mehta v. State of Tamil Nadu, 1997, the Supreme Court had held that the children below the age of 14 years cannot be employed in any hazardous industry, mines and other works and had laid down exhaustive guidelines how the State authorities should protect economic, social and humanitarian rights of millions of children.

#### **(xi) Right to Freedom of Religion has Articles 25, 26, 27, 28.**

The 42nd Amendment (1976) added the words 'Socialist' and 'Secular' in the Preamble, emphasising on the secular nature of the Indian State. In S.R. Bommai v. Union of India, 1994, Supreme Court had held that "Secularism is a basic feature of the Constitution". Accordingly, the State in India treats all religions equally and with equal respects while the individual is free to profess and propagate any religion, he/she likes.

**xi(i). Article 25** guarantees to every person the freedom of conscience and religion and the right to profess practice and propagate religion, subject to public order, morality, and health, and to the other provisions of Part III. However, the State could make laws in (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of public character to all classes and sections of Hindus (Article 25 (2a, b)). No religious instructions can be given in any state-run educational institution, nor any religious rituals imposed. The Supreme Court even held that no one can be compelled to sing the National Anthem (See *Bajaj Emmanuel v. State of Kerala*, 1984) if he/she has genuine, conscientious religious objections. However, the State can acquire places of worship like mosques, churches, temples etc. in exercise of its sovereign power, if it is necessary for maintaining law and order (See *Ismail Faruqui v. Union of India*, 1994: Gulam Kadar Ahmadbhai Menon

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

v. Surat Municipal Corporation. 1998). Noise pollution in the name of religion is not allowed (see Church of God - Full Gospel - India v. KKRMC Welfare Association, 2000). Though, individual's right to profess, practise and propagate has been guaranteed by the Constitution. forced conversion or religion is not permitted. though the person wanting to change religion make a declaration verified by police, can convert to another religion. The practice and the propagation of one's religion is allowed but not the tandava dance carrying lethal weapons and human skulls (see Anand Matga Case, 1984). Likewise, the slaughter of cows on Bakr-id is not an essential part of Mohammadan religion (see Mohd. Hanif Quareshi v. State of Bihar 1958). Indeed, the state can regulate social, economic, political secular activities associated with religious activities. The State can make laws for social welfare and social reforms (see State of Bombay v. Varasu Bapamali, 1953, prohibiting polygamy in Hindu religion, prohibition of Sati or system of Devadasi: see Saifuddin v. State of Bombay, 1963).

**xi (ii). Article 26** subject to public order. morality and health, every religious denomination or section thereof shall have the right

- (a) To establish and maintain institutions for religious and chartiable purposes;
- (b) To manage its own affairs in matters of religion:
- (c) To own and acquire movable and immovable property; and
- (d) To administer such property in accordance with the law.

Unlike Article 25 which is an individual right. right guaranteed under Article 26 is the right of the 'organised body' such as a Hindu body or the Sikh body or the Muslim body. In Azeez Bashu v. Union of India - 1968 (also St.Stephen S College v. University ofDelhi, 1992), the apex court held that the Aligarh University was not established by the Muslim minority and therefore, the Muslim community was not authorised to -maintain" it. The university was established by the law

## Spardha Mithra coaching Centre

### Indian Polity and Governance

of the Parliament. With regard to the administration of the religious property, the apex court made it clear in the case of *Rati La! v. State of Bombay*, 1954 that managing the property of a religion is different (and is, in fact, a fundamental right) than managing the affairs of the religion - the latter can be regulated by a valid law.

**xi (iii). Article 27** - No person shall be compelled to pay a tax, the proceeds of which are specially appropriated for payment of expenses for the promotion or maintenance of any particular religion or religious denomination. This Article clearly demonstrates the secular nature of the Indian State. It prohibits the state not to levy any tax proceeds of which are spent on any particular religion. In *Rati La! v. State of Bombay* 1954, the apex court made it clear that the nature of 'tax' is (a) exaction compulsorily, and (b) spending of the proceeds for public purposes while in the case of 'levy' the exaction is not compulsive and the spending of the proceeds could be for special purpose. Thus the former can not be spent for particular purposes (i.e. particular religion). In the case of *Sri Jagannath v. State of Orissa*, 1957, the levy as fee was to be spent under the Orissa Hindu Religious Endowments.

**xi (iv). Article 28** (1) No religious instructions shall be provided in any educational institution wholly maintained out of state funds [Article 28(1)]. (2) Nothing in clause (1) shall apply to an educational institution which is administered by the state but has been established under an endowment or trust which requires that religious instruction shall be imparted in such an institution [Article 28(2)]. (3) No person attending any educational institution recognized by the state or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in the institution or to attend any religious worship that may be conducted in such an institution or in premises attached thereto unless such persons or, if such person is a minor, his guardian has given his consent thereto.

**xii.** The Cultural and Educational Rights have two Articles, 29, 30

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**xii (i). Article 29** reads (1) any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission to any educational institution maintained by the State or receiving aid out of State funds on grounds of religion, race, caste, language, or any of them. In regard to this clause, the society for the development of the ideals and teachings of Sri Aurobindo and the Mother Auroville (Emergency Provisions) Act. 1980 on the grounds that it was violative of its right under Article 29. In *S.P. Mittal v. Union of India*. 1983, the apex court held that the act was violative of the rights of any citizen to conserve one's language, script or culture. In *State of Madras v. Champakam*. 1951, the order of the Madras Government was held invalid for being violative of Article 29(2) for having denied the admission only because the admission seekers were Brahmins.

**xii (i). Article 30**—(1) All minorities, whether based on religion or language, shall have the right to establish and administer education institutions of their choice [Article 30(1)]. (2) In making a law providing for the compulsory acquisition of property of an educational institution established and administered by a majority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under the clause [Article 30 (1A)]. (3) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language [Article 30(2)]. In *D.A. V College, Bhatinda v. State of Punjab*, 1971, the Supreme Court held the view that the right of the minority to establish and administer educational institutions of their choice includes the right to have a choice of medium of instruction, thus rejecting the university circular imposing Punjabi, violative of Article 30(1). The scheme of reservation in private educational institutions (majority or minority) is violative of Article 30 (see *P.A. Inamdar v. State of Maharashtra*. 2005).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**(xiii) Article 31** of the Constitution which was a fundamental right to property is now a constitutional right to be regulated by ordinary law. Article 31(A) provides for saving of laws which relate to acquisition of estates while Article 31 (B) validates Acts and Regulations mentioned in Ninth Schedule to the Constitution. Article 31(C) saves laws which give effect to certain directive principles while Article 31(D) has been repealed by the Forty-third Amendment Act 1977.

**(xiv) Right to Constitutional Remedies** has only one **Article 32.**

This right gives power to the people and groups to move the High Courts and the Supreme Court for the enforcement of the rights conferred by Part III. The courts, in this respect, have the power to issue directions, or orders or writs, but the jurisdiction of the Supreme Court and the High Courts differ:

- (i) Whereas the Supreme Court issues writs for the enforcement of the fundamental rights, the High Courts do it for the enforcement of the fundamental rights as well as for other purposes; -
- (ii) The Supreme Court's jurisdiction of writs covers the whole country, and that of the High Courts, to their respective territorial areas:

The types of writs are:

- (i) Habeas Corpus: Literally (from Latin term) it means 'to have the body of'. This writ can be issued against both public authorities and individuals. It is not issued where (a) the detention is lawful, (b) the proceedings are for contempt of a legislature or a court, (c) the detention is by a competent court, and (d) the detention is outside the jurisdiction of the court.
- (ii) Mandamus : Literally it means 'we command'. This writ is issued (a) against a private individual or a body; (b) to enforce departmental instruction that does not possess statutory force; (c) when the duty is discretionary and not mandatory; (d) to enforce a contractual obligation; (e) against the President of India or state governors; and (f) against the chief justice of a High Court acting in judicial capacity.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (iii) **Prohibition** : Literally, it means 'to forbid'. This writ can be issued only against judicial and quasi-judicial authorities. It is not available against administrative authorities, legislative bodies, and private individuals or bodies.
  - (iv) **Certiorari** : Literally, it means "to be certified" or "to be informed". It is issued by a higher court to a lower court or a tribunal, or to an administrative authority (since 1991), either to transfer on the ground of excess of jurisdiction or lack of jurisdiction or error of law. Thus, unlike prohibition, which is only preventive, certiorari is both preventive as well as curative.
  - (v) **Quo Warranto** : it means 'by what authority or warrant'. It is issued by the court into the legality of claim of a person to a public office. Hence, it prevents illegal usurpation of public office by a person. Threat of infringement of fundamental rights is enough to justify the issue of writ (see *Simranjit Singh v. Union of India*, 1993).
- (xv)** The other three Articles in Part III, 33, 34 and 35 relate to (a) power of the Parliament to modify Part-III in their application to armed forces (Article 33), (b) restriction on rights of Part III while martial law is in force in any area (Article 34), and (c) Parliament's power to make laws so to give effect to the provisions of Part III.

The Fundamental Rights are important in so far as they help individual develop his/her personality. They can be suspended only during emergencies. Article 359 empowers the President to suspend the right to enforce fundamental rights guaranteed by Part III. It says that while the proclamation of emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the fundamental rights as may be mentioned in the order (except Article 20 and 21 as amended by the 44th Constitutional Amendment, 1978), and all proceedings pending in a court for the enforcement of such rights shall remain suspended for the period during the proclamation is in force or for such shorter period as may be specified in the order.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

As has been made clear, it needs to be made explicit that the fundamental rights are enforceable. The fundamental rights are amendable too through the special majority of each House of the Parliament. In the *Shankari Prasad v. Union of India*, 1951, the constitutional validity of the first amendment (1951), which curtailed the right to property, was challenged. The Supreme Court ruled that the power of Parliament to amend the Constitution under Article 368 also included the power to amend the fundamental rights. In the *Golaknath v. State of Punjab* (1967), the Supreme Court held that the fundamental rights are immutable and hence the Parliament cannot abridge or take away any of the fundamental rights. Reacting to the 1967 case, the Parliament enacted the 24th Amendment (1971) asserting that the Parliament can abridge or take away fundamental rights, and that it has the power to amend the Constitution, including the fundamental rights. In the *Kesavananda Bharati*

*v. State of Kerala* (1971) case, the Supreme Court upheld the validity of the 24th Amendment, saying that the Parliament can abridge or take away the fundamental rights by amending the Constitution. But the apex court ruled that the amending power of the Parliament does not enable it to alter the 'basic structure' of the Constitution. The 42nd Amendment (1976) authorised the Parliament to amend any part of the Constitution and that no amendment could be questioned in any court. The Supreme Court, in the *Minerva Mills v. Union of India* (1980) and the *Waman Rao* (1981) cases, adhered to the doctrine of "basic structure" as something out of the domain of



## Spardha Mithra coaching Centre

### Indian Polity and Governance

Parliament. though the Parliament does possess the power of amending the Constitution.

The fundamental rights granted by the Indian Constitution have been criticised as inadequate in so far as they do not provide sufficient freedom and opportunity to all citizens. The phrases, such as "security of State", "public order", "morality" and the like, are not only vague, but have wide implications. Likewise, words such as "reasonable restrictions." "the interest of public orders" have not been explicitly stated. That is why it is often said that there are more limitations on fundamental rights than the rights conferred on the people. Though exhaustively stated, the chapter on fundamental rights does not contain a single right which can be termed as having 'social' or 'economic content. Jennings objects to the legalistic language used in the chapter as lawyers' paradise, beyond the comprehension of common man. Despite free legal aid, the whole legal procedure is so expensive that the people usually choose to stay away from the courts. The freedom of press is slightly more than implicit. The employment of children in hazardous environments continues. Yet, it would be wrong to ignore the importance of fundamental rights: the fundamental rights have been very aptly described as the Magna Carta of liberties of the Indian people: they provide a check on the legislature and the executive: they protect the rights and interests of the people, the minorities in particular: they help establish the rule of law and democratic system in the country —and thanks to judicial activism, the courts sometimes seem mightier than the state.

### **6.2 Fundamental Duties**

The incorporation of fundamental duties in the Constitution has not been a common feature in the Western countries. In United Kingdom, Canada, and Australia, duties constitute part of the common laws: The French Constitution only has a passing reference of the duties. The Japanese Constitution contains duties of the citizens. The former Soviet Constitution

## Spardha Mithra coaching Centre

### Indian Polity and Governance

and the present Constitution of the Peoples' Republic of China refer to fundamental duties. The Swaran Singh Committee. in its recommendations (1976). suggested the inclusion of separate chapter on fundamental duties in the Constitution. Following it. Part IVA: with Article 51A: was added by the 42nd Amendment. In 2002, through the 86th Amendment. a duty was incorporated. providing opportunities to children between the ages of six and fourteen years. The fundamental duties, so described in the constitution, are:

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag. and the 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 spirit of common brotherhood among all the people of India transcending religious, linguistic, and regional or sectional diversities;
- (f) to renounce practices derogatory to the dignity of women;
- (g) to value and preserve the rich heritage of our composite culture;
- (h) to protect and improve the natural environment including forests. lakes, rivers and wildlife, and to have compassion for living creatures;
- (i) to develop scientific temper. humanism and spirit to inquiry and reform:  
to safeguard public property and to abjure violence;
- (k) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;
- (l) parents or guardians should provide opportunities for education to their children or wards, between the ages of six and fourteen years (86th Amendment, 2002).

The fundamental duties are statutory duties and are only enforceable by the law of the Parliament. To be enforceable requires the knowledge of these

## Spardha Mithra coaching Centre

### Indian Polity and Governance

duties. The Supreme Court, in *MC. Mehra v. Union of India* (1983), has directed the Union Government to introduce compulsory teaching of lessons relating to fundamental duties. In another case, *MIMS Students Union v. AIIMS* – 2001. the Supreme Court regarded fundamental duties as important as the fundamental rights, as also an aid to the interpretation of provisions of the Constitution.

The fundamental duties, included in the Constitution, are vague and analogous, described only as moral precepts. There is no provision for the enforcement of these duties [*Ramsharan v. Union of India* (1980)] or any sanction to prevent their violation. The Verma Committee on Fundamental Duties (1999), however, has identified the existence of meritorious provisions for the implementation of fundamental duties, such as the Prevention of Insults to National Honour Act (1971), The Protection of Civil Rights Act (1976), and the Wildlife (Protection) Act, 1972).

#### **7. DIRECTIVE PRINCIPLES OF STATES POLICY**

Part IV of the Constitution, from Articles 36 to 51, contains Directive Principles of State Policy. These provisions, Article 37 says, are not enforceable by the courts. But they are, nevertheless, fundamental in the governance of the country and the State shall do well to make laws on these principles;

There was a considerable debate in the Constituent Assembly with regard to both the Fundamental Rights and

Directive Principles. A Fundamental Rights sub-committee was entrusted to frame fundamental rights as well as directive principles, both to be designated as fundamental rights. The sub-committee had numerous types of rights—social, political, economic—to select from. Having classified them into two categories, the sub-committee marked one category as enforceable in a court of law. and the other as non-enforceable. Presumably, the committee felt that the first category of rights with somewhat political overtones could be legally enforced. while the second category of rights could not, until they were realized. The framers of the Constitution did not

## Spardha Mithra coaching Centre

### Indian Polity and Governance

find the two categories of rights as mutually opposed. In fact, they found them complementary of each other, putting the fundamental rights in the forefront and the directive principles in the waiting, with one to be enforced immediately and the other to be enforced as and when practicable. The intentions of the framers were to enlarge, as Markandan ("Fundamental Rights vis-a-vis Directive Principles of State Policy") says, on Fundamental Rights, by a progressive transfer to it from the Directive Principles. In fact, they thought of the fundamental rights and directive principles as equally important. The fundamental rights are fundamental because they are essential for the development of the individual's personality but the directive principles are no less fundamental as they are indeed regarded so in the governance of the country. It is not that the framers thought of the directive principles as of no significance. Representing the socio-economic ideals and objectives of the peoples' aspirations, the directive principles were made non-justiciable till the time they could be made justiciable. This means that the courts, indeed, would not force the state to implement the directive principles, but they would not go against them. If they do, it would amount to going against the provisions of the Constitution as well. To this extent, the directive principles do enjoy judicial status as well. It is clear that the framers of the Constitution did not see any conflict between the fundamental rights and the directive principles, nor did they suggest the primacy of fundamental rights over the directive principles.

The records of the Constituent Assembly state, as B.N. Rau suggested, that as and when the two parts appear to come into conflict, the directive principles would prevail. Rau's suggestion in the form of an amendment was not accepted, but it certainly demonstrates the mood of that time. The framers of the Constitution thought of the fundamental rights and directive principles complementing each other, the former as the laws for the present and the latter as the laws of the future. Happily, the courts have settled down to the position that the directive principles do constitute relevance to fundamental rights (see *Grih Kalyan Kendra Workers Union v. Union of India*, 1991)

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Directive Principles have been haphazardly listed with hardly any connection with one another. They may be stated as they appear in the Constitution.

1. 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 social, economic and political justice, shall be an integral part of all institutions of the national life [Article 38(1)]. The word social justice has been defined as in *Air India Statutory Corporation v. United Labour Union* 1997, "an integral part of justice A dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals, and deprived sections of the society and so to elevate them to - - - a life with dignity - - -"
2. The State shall, in particular, strive to minimize inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations. [Article 38(2)]. It was inserted by the 44th Amendment in 1978.
3. The State shall, in particular, direct its policy towards securing:
  - (a) that citizens-men and women equally-have the right to adequate means of livelihood:
  - (b) that the ownership and control of material resources of the community are so distributed as to best sub-serve the common good;
  - (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
  - (d) that there is an equal pay for equal work for both men and women;
  - (e) that the health and strength of workers, both men and women, and children of tender age-are not abused and that citizens are not forced by economic necessity to enter vocations not suited to their age or strength:
  - (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment (Article 39). With regard to part 'e' of Article 39.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the Supreme Court, in *M.C. Mehra v. State of Tamil Nadu - 1991*, held that the children of tender age can not be employed in factories such as manufacturing matches, though they can be employed in the process of packing, but in the areas away from the place of manufacturing the matches. In yet another case, *M.C. Mehta v. State of Tamil Nadu - 1997* also known as the Child Labour Abolition case, held that the children below the age of 14 can not be employed in any hazardous industry or mines. With regard to part 'd' of Article 39, the Supreme Court, in *Randhir Singh v. Union of India. 1982*, held that though the principle of equal pay for equal work is not a fundamental right, but is certainly a constitutional goal capable of enforcement under Article 32. In *State of Haryana v. Raipal Sharma 1997*, it was held that the teachers employed in privately managed aided school in the State, are entitled to the same salary and dearness allowance as is paid to the teachers of the Government school.

4. The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (Article 39A). This was inserted by 42nd Amendment, 1976 (See *Bajiban Chauhan v. State of Uttar Pradesh, 1990*).
5. The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government (Article 40). (See also 73rd and 74th Amendments 1993).
6. The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education, and to public assistance in cases of unemployment, old age, sickness, and disablement (Article 41). In a case, *Jacob v. Kerala Water Authority, 1991*, the apex court directed that the laws should be so interpreted as should help advance Article 41.
7. The State shall make provisions for securing just and humane conditions of work and for maternity relief (Article 42).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

8. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers-agricultural, industrial or others, work, a living wage conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular. the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas (Article 43).
9. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry (Article 43A. as inserted by 42nd Amendment, 1976).
10. The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India (Article 44). In *Sarla .1/ludgal v. Union of India*. 1995. the Supreme Court wanted to know the steps taken by the Union Government towards securing a uniform civil code for the citizens of India and which in its opinion was imperative for protection of the oppressed and promotion of national unity and integrity. As recent as of case in 2003. *John Vallamatton v. Union of India*. the Supreme Court regretted for non-enactment of common civil code. The Supreme Court is of the view that there is no relationship between religion and personal law, through which some Muslims get escaped from Article 44, and has directed that all marriages, irrespective of religion. be compulsorily registered so to (a) prevent child marriage. (b) check bigamy and polygamy, (c) help women to exercise their rights. (d) enable widow to claim inheritance, (e) deter husbands from deserting their wives (See the Times of India of February 15, 2006).
11. The State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years (Article 45). Through 86th Amendment Act of 2002, the State is required to provide free and compulsory education to all children between the age of six and fourteen.
12. The State shall promote with special care the educational and economic interests of the weaker sections of the people. and in particular. of the Scheduled Castes and the Scheduled Tribes and shall 'protect them from social injustice and all forms of exploitation (Article 46).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

13. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes, of intoxicating drinks and drugs, which are injurious to health (Article 47).
14. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle (Article 48).
15. The State shall, through 42nd Amendment (1976), endeavour to protect and improve the environment and safeguard forests and wildlife of country (Article 48A). In *MC. Mehta v. Union of India*, 1983, the Supreme Court directed the government, at all levels, to take appropriate steps for the protection and control of pollution of water.
16. It shall be the obligation of the State to protect every monument or place or object of artistic or historical interest, declared by a law made by Parliament to be of national importance, from spoiling, disfigurement, destruction, removal, disposal or export, or otherwise (Article 49).
17. The State shall take steps to separate judiciary from executive (Article 50). Through various laws, steps have been taken to separate judiciary and executives.
18. **The State shall endeavour to :**
  - (i) promote international peace and security;
  - (ii) maintain just and honourable relations among nations;
  - (iii) foster respect for international law and treaty obligations in dealings with other peoples: and
  - (iv) encourage settlement of international disputes by arbitration (Article 51).

In regard to the above, one can mention *Berubari case*, 1960, *Varghese v. Bank of China*, 1980, and *Civil Rights Committee v. Union of India*, 1983.

There appear, from the above, directive principles which relate to social policy (Articles, 38, 39, 41, 43A, 44, 47), administrative policy (Articles. 40



## Spardha Mithra coaching Centre

### Indian Polity and Governance

and 50), socio-economic policy (Articles 41, 42, 43, 48) and international policy (Article 51). What is clear from above is that the directive principles seek to establish a welfare state and bring about social revolution in India.

The idea of directive principles of state policy is very old. The Constitution of principality of Liechtenstein (1921) and that of the Spanish Republic (1931) and references to some directives issued for the state. The framers of our Constitution were impressed by the provisions relating to directive principles as stated in the Constitution of the Irish Free State (1937). Dr. B.R. Ambedkar described directive principles as the 'novel' feature to our Constitution as they are, like instruments of instructions of the Government of India Act 1935. issued to the governor-general by the British Government. These are directives to the governments of the day to consider them fundamental while formulating the policies with regard to the administration of the country.

Some of the features of these principles can be briefly summed up as under:-

1. The principles are not justiciable: the government cannot be called to courts for not having implemented them.
2. They serve as guidelines while making laws for the people: they are like policies for the government; the national manifesto. irrespective of political party in power.
3. They are so comprehensive that they seek to build a socialist society (see Articles 38, 39, 39A, 41, 42, 43, 43A and 47), a Gandhian India (see Articles 40, 43, 46, 47 and 48) and a liberal and international state (see Articles 44, 45, 48, 48A, 49, 50 and 51).
4. They are positive as they require the governments to do certain things.
5. They are social and economic in nature: the directive principles seek to establish social and economic democracy.
6. They are not enforceable; but they cannot be ignored either. Governments cannot make laws against them. and if they do, they can be declared violative of the Constitution. In this sense, the Directive Principles are enforceable.
7. They lay the foundations of economic democracy.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

8. Ever since the Directive Principles of State Policy were incorporated in the Constitution, certain new directive principles have been added. These are:

- (a) to secure opportunities for healthy development of children (Article 39).
- (b) to promote equal justice and to provide free legal aid to the poor (Article 39A).
- (c) to take steps to secure the participation of workers in the management of industries (Article 43A).
- (d) to protect and improve the environment and the safeguard forests and wildlife (Article 48A).
- (e) to minimize inequalities in income, status, facilities, and opportunities, added in Article 38 (44th Amendment, 1978).
- (f) to declare elementary education obligatory under Article 21 (86th Amendment, 2002).

9. The directive principles help supplement fundamental rights: they constitute the economic aspect of fundamental rights, its socio-economic aspect.

10. As they stand, fundamental rights and directive principles are different from each other. That is why they are often distinguished: the fundamental rights are enforceable by the court. whereas the directive principles are not enforceable: the courts can issue writs so as to help protect the fundamental rights whereas they cannot issue any writ to force the State to implement the directive principles; the fundamental rights are rights of the people. whereas the directive principles are not the rights but are the fundamental duties of the State to keep them in mind while formulating policies or making laws. The fundamental rights provide restrictions on the State: they are limitations on the powers of the State. whereas the directive principles are obligations the State is supposed to perform; the fundamental rights are. in their nature, both negative (seeking checks on the State) and positive (asking the State to provide certain facilities), while the directive principles are. in their nature, always positive, expecting the State to perform certain tasks; the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

fundamental rights lay the foundations of political democracy whereas the directive principles those of economic and social democracy, the directive principles usually conform to the chapter on fundamental rights: the fundamental rights are, by and large, individual-oriented, whereas the directive principles are, to a great extent, community-oriented; the fundamental rights have a 'liberal' orientation whereas the directive principles have a 'communitarian' orientation. And yet, the fundamental rights and the directive principles go together: both do not stand against each other, but seek

to **complement** each other. The question of attitudes of the judiciary, legislature, and executive with regard to fundamental rights and the directive principles has been a significant one. In cases, such as *Om Prakash v. State of Punjab* (1951), *State of Madras v. Champakam Dorairajan* (1951), and *Jagwant Kaur v. State of Bombay* (1952), the court held the view that the Directive Principles of State Policy have to conform to, and, in fact, run subsidiary to fundamental rights. In *Fram Nussenvanji Balsara v. State of Bombay* (1951), *Ajaib Singh v. State of Punjab* (1952), and in *Biswanbhar v. State of Orissa* (1957) cases, the courts held the view that the directive principles have to work within the framework of fundamental rights. In yet another case, *MH. Quareshi v. State of Bihar* (1958), the Supreme Court maintained that although the directive principles should conform to and run subsidiary to the chapter on fundamental rights, it would not reject the directive principles altogether. The constitutional amendments (first in 1951, the fourth in 1955, and the seventeenth in 1964) authorized the Parliament to amend the Constitution so as to give the directive principles an advantageous position as compared to the fundamental rights. In 1967, the Supreme Court, in the *Golaknath* case, declared the fundamental rights as "sacrosanct" and held that the fundamental rights cannot be amended for the implementation of the directive principles. In reaction to the *Golaknath* case, the 25th Amendment (1971) inserted Article 31 C which contained: (i) no law which seeks to implement Article 39(b) and 39(c) would be void on the ground that it contravenes the fundamental rights,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

especially Articles 14, 19 and 31; (ii) no law which seeks to give effect to such policy (i.e.. Articles 39(b) and 39(c) would be questioned in a court of law. In the Kesavananda Bharati case. the Supreme Court declared clause (ii) of Article 31C as unconstitutional; stating that the judicial review is a part of the basic structure of the Constitution. The 42nd Amendment (1976) accorded primacy to directive principles over fundamental rights (Articles 14, 19 and 31). But in the Minerva Mills case (1980) the Supreme Court reversed the position making the Directive Principles subordinate to Fundamental Rights. However, the Supreme Court. in the Minerva Mills case regarded both the Fundamental Rights and Directive Principles as complementary. one no less important than the other and both essential parts of the basic structure.

Though much remains to be done with respect to the implementation of the directive principles, there is much that has been done. The Minimum Wages Act (1948). the Payment of Bonus Act (1965), the Contract Labour Regulation and Abolition Act (1970), the Child Labour Prohibition and Regulation Act (1986), the Bonded Labour System Abolition Act (1976). the Factories Act (1948). the Mines Act (1952). the Industrial Disputes Act (1948), have been enacted to protect the interests of the labour. The Maternity Benefit Act (1961) and the Equal Remuneration Act (1976) have been made to protect the interests of women workers. For the promotion of common good. insurance companies were nationalized in 1956 and banks in 1971. The Community Development Project (1952 ). Hill Area Development Programme (1960), Drought-Prone Areas Programme (1973), Minimum Needs Programme (1974). Integrated Rural Development Programme (1978), Jawahar Rozgar Yojana (1989), Swaranajayanti Gram Swarozgar Yojana (1999), and Sampoorna Grameen Rozgar Yojana have been launched for raising the standard of living of the people. The Wildlife (Protection) Act, 1972 and the Forest (Conservation) Act, 1980, have been enacted to safeguard the wildlife and the forests respectively. The 73rd and 74th amendments have given the local governments a constitutional status. The Untouchability (Offences)

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Act, 1955. renamed as the Protection of Civil Rights Act in 1976, and the legislations passed for the scheduled castes and the scheduled tribes in 1989 have helped promote the interest of the weaker sections of the society. Health services are being extended to the remotest possible areas and attempts are being made to eradicate diseases such as leprosy, AIDS, cancer, and the like. Universalisation of education, especially elementary education, has been accorded the highest priority so as to provide free education to all children till the age of 14. The 86th amendment (2002). creating Article 21 A, seeks to provide free and compulsory education to all children between the age of 6 and 14 years. The year 1990-91, declared as the "year of social justice" in the memory of Dr. B.R. Ambedkar, indicates the facilities given to the people belonging to the Scheduled Castes and Scheduled Tribes. In order to protect the Scheduled Castes and Scheduled Tribes from discrimination, the government enacted Prevention of Atrocities Act in 1995 prescribing severe punishments for such action. Land reforms legislations have been enacted form time to time. Upto September 2001, more than 20 million acres (81,000. sq. km.) of land had been distributed to Scheduled Castes, Scheduled Tribes and the landless poor. A core objective of the banking policy is to improve banking facilities in rural areas. The Minimum Wages Act of 1948 empowers government to fix minimum wages for people working across the economic spectrum. The Consumer Protection Act of 1986 provides for better protection of consumers. The act is intended to provide simple, speedy, and inexpensive redressed of consumers' grievances and awarding relief and compensation wherever appropriate to the consumer. A system of elected village councils, known as Panchyati Raj covers almost all states and territories of India. One-third of the total number of seats have been reserved for women in Panchyats at every level; and in the case of Bihar, half the seats have been reserved for women. Legal aid at the expense of the State has been made compulsory in all cases pertaining to criminal law, if the accused does not have the means to engage a lawyer. India's foreign policy has been influenced by the directive principles. India supported the United

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Nations in peace-keeping activities, with the Indian Army having participated in 37 UN peace-keeping operations. The implementation of a uniform civil code for all citizens has not been achieved owing to widespread opposition from various religious groups and political parties. The Shah Bano case (1985-86) provoked a political firestorm in India when the Supreme Court ruled that Shah Bano, a Muslim Woman who had been divorced by her husband in 1978. was entitled to alimony from her former husband under the Indian law applicable to all Indian women. This decision evoked outrage in the Muslim community, which sought the application of the Muslim Personal Law. In response, the Parliament passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. However, the problem persists. Though there is much that has to be achieved with respect to the implementation of numerous directive principles, the task of implementing them is an ongoing process. Speaking about it, Nehru had rightly remarked: " so long as there are tears and sufferings, so long our work will not be over." Professor Wheare describes the directive principle as a manifesto of our ideals and objectives. It may rightly be called our national manifesto; for every political party which comes to power is supposed to implement them. The directive principles have evoked a mixed opinion. They are, as K.T. Shah has said, a cheque payable at the convenience of the bank. Some object to the inclusion of directive principles into what constitutes the basic structure of the Constitution (see Pratap Bhanu Mehta, "Inner Conflict of Constitutionalism" stating that the determinate fundamental rights cannot be equated with indeterminate directive principles. Srinivasan held the view that these principles combine "rather incongruously" the modern with the old and provisions suggested by reason and science with provision based purely on sentiments and prejudice. Sir Ivor Jennings says: "Directive Principles do not matter." These principles have been criticized as lacking legal sanction, devoid of a constitutional importance; they are vaguely stated and have been illogically arranged: no two principles are linked together; there are principles which would not be implemented in any remote future, and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

there are principles which any government worth the name must enforce. Yet these principles have utility of their own. B.N. Rau, the advisor to the Constituent Assembly, had said that these principles are "moral precepts for the authorities of the State" and that "they have an educative value." Granville Austin thought of these principles as those, which help further "the goals of the social revolution." These principles act as signposts indicating what has been achieved and what still has to be achieved; they provide criteria to judge the performance of the rulers; they help induce the governments to work for the welfare of the people. Justice Sapru had said: "In these directive principles will be found the entire philosophy on which the welfare state in any modern community can be founded." These principles serve as the common manifesto. Justice Gajendragadker (The Constitution of India) rightly says: "A ruling party, irrespective of its political ideology, has to recognize the fact that these principles are intended to be its guide, philosopher, and friend in its legislative and executive activities."

#### **8. RIGHTS ISSUES**

Rights are our social claims which are possessed by the individuals by virtue of their being members of the society, of their being human beings. The state not only maintains these rights, but protects them for the individual. These rights are essential for our existence, our growth, the development of our personality. Indeed, these rights can not be formulated once for all, but at the same time it can be denied that they are dynamically expandable. Freedom is not a right only to express my opinion. it is also a right to form associations, to move anywhere in the country, to reside and settle at any place. It is true that our rights are not absolute, nor they can be exercised the way we like: my right to life implies right to livelihood, to health, to live with dignity. to have shelter, but it does not mean that I can take away the life of others. Our rights touch contours of the entire civilized life. Rights belong to all in the civilized life, they belong to men and women alike, to elderly and the children alike, the boy child and the girl child alike, the abled as well as

## Spardha Mithra coaching Centre

### Indian Polity and Governance

disabled, the free as well as the detained alike, the women belong to a higher caste and the one who is a dalit, a tribal. In fact, the weaker sections of society deserve special rights so to raise them equal to others. Democracy seeks upliftment of all—high and the lowly, the rich and the poor. Rights belong to all human beings as human beings. Issues relating to rights are numerous. Discriminations, atrocities, torture, favouritism, in any form, create issues which affect the people directly or indirectly, intentionally or otherwise. We may take notice of issues relating to rights in two ways: (i) Rights which are normally be granted to the people and which so far have been either ignored or purposely made ineffective, for reasons beyond our control. Terroristic attacks from militant extremists and insurgents reduce country's capacity to augment efforts to cover up the spread of political and social unrest endangering rights of the people. (ii) Rights which arise or should arise out of the malfunctioning of those who hold power and position in the society. The right of the aged/elderly comes up in the first category, and the issue relating to custodial violence or death comes in the second category.

#### **8.1 Rights:Which Need to be made Effective**

**(a) Rights of Women:** The principle of gender equality is enshrined in our Constitution. Since 1978, there has been a marked shift in the approach towards women's issues from welfare to development. The Constitution officially grants equality to women and adopts measures of positive discrimination favour of women (see Ar-ticles 14, 15, 16, 39(c), 42). The Parliament has passed numerous laws to protect the interests of women (see Special Marriage Act, 1954, the Hindu Marriage Act, 1955. the Hindu Adoption and Maintenance Act, 1956, Dowry Prohibition Act 1961, Medical Termination of Pregnancy Act, 1971, the Equal Remuneration Act. 1976, the Child Marriage Restraint (Amendment) Act, 1978. the Criminal Law (second Amendment) Act, 1985. the Dowry Prohibition (Amendment) Act, 1984. The 73rd and the 74th Amendments, 1993. have given one-third reservation for women in local rural/urban legislation bodies, and women's



## Spardha Mithra coaching Centre

### Indian Polity and Governance

reservation bill is pending before the Parliament for reservation in the states and central legislatures. Laws such as Immoral Traffic (Prevention) Act, Sati Prevention Act, Indecent Representation of Women (Prevention) Act protect women from crimes such as rape, abduction, torture, molestation, sexual harassment and the like. Our judiciary, too, has given significant verdicts to protect and promote women's in-terests (See Shah Bano case). Despite all such measures. domestic violence, female foeticide and infanticide are common evils still prevailing in the country. Housewives account for more than half of the total female suicide cases in India.

**(b) Children's Rights:** Children. because of their tender age and immature mind, have special rights and legal entitlements which are acknowledged nationally and internationally. It has been well stated in the 1924 Declaration of Rights of the Child (Geneva Declaration) that the children are the future and that by investing in them, societies will have a bright future. Article 23 of the Con-stitution of India prohibits traffic in human beings and forced labour and abolishes bonded labour. Article 24 prohibits the employment of children in hazardous facto-ries (see M C. Mehta v. State of Tamil Nadu, 1996 which verdict forbids the employment of children below the age of 14 and making arrangement for their education). Articles **21-A** and **45** provide for free and compulsory education for all the children between the age of six and fourteen. **Article 39 ('e' and 'f')** provides that the health and strength of - - - the tender age of children are not abused and that (they) - - - are not forced by economic necessity to enter avocations unsuited to their age - - -that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. **The Child Labour (Prohibition and Regulation) Act 1986**, provides (i) ban on the employ-ment of children (till the completion of their fourteenth year), (ii) regulate the conditions of work of children.in employment where they are not prohibited from work-ing, (iii) lay down enforced penalties for employment of children in violation of the provisions of this and other Acts which forbid the employment of the children: (iv) to obtain uniformity in the definition of "child" in the related

## Spardha Mithra coaching Centre

### Indian Polity and Governance

laws. The Supreme Court has generously given decisions in favour of the children. In *People's Union for Democratic Rights v. Union of India*, 1982, the apex court held that children under 14 could not be employed in hazardous occupation. The cases such as *Ai. C. Mehra v. State of Tamil Nadu*, 1991 and 1996 had the same verdict as in the above case. In *Gaurav Jain v. Union of India*, 1997 the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life without any pre-stigma attached to them. It is a lamenting commentary relating to the status of the girl children in India. The Government of India, in its report, to the UN Committee (2004-2005) on the Rights of Child, said that every year 12 million girls are born three millions of whom do not survive their 15th birthday; one-third of these deaths occur in the first year of life while every sixth female death is directly due to gender discrimination. Traditions say that in some parts of Rajasthan and Uttar Pradesh, girls and women eat less than the boys, and women, and they eat after boys and men have already eaten. Do we not need to do something for the child, the girl child?

**(c) Rights to Adequate Housing:** The Constitution has recognised the right to adequate housing in its numerous provisions, including such a right to women and children ( See Articles **15(3)**, **39(a)**). In addition to the Constitution's provisions, there have been several important judgments by the Supreme Court which have established the relationships between the right to housing and right to life under Article **21** (see *Avas Evam Vikas Parishad v. Friends Cooperative Housing Society Ltd* where the court had held that the right to shelter is a fundamental right which springs from the right to residence under Article 19(1)(e) and the right to life under Article 21. In 1981, in *Francies Coralie v. Union Territory of Delhi*, and in *Chameli Singh v. State of Uttar Pradesh*, 1996. the court had declared shelter as something that includes adequate living. space. safe and decent structure, clean and decent surroundings, sufficient light, pure air and water and the like. The Supreme Court in the case *Shan-tistar Builders v. Naravan Khimalal Totame*, 1990 held that: the right of life would take within its

## Spardha Mithra coaching Centre

### Indian Polity and Governance

sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. It also made specific mention of children's right to adequate housing by stating that the Constitution aims at ensuring the full development of every child that would be possible only if the child is in a proper home.

**(d) Rights of the Scheduled Castes:** The Scheduled Castes population, in India, constitutes about 16.20 per cent of the total populations, belonging, among others, to Hinduism, Buddhism and Christianity, and usually use the term Dalits: for themselves . the depressed classes whom Gandhiji called "Harijans" — the children of God. The 1950 Constitution states that no citizen should be discriminated against because of religion, race, or caste

among other attributes, and should not be denied access to and the use of public services. Article 341 authorizes the President of India to specify "castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes". The First Amendment to the Constitution passed in 1951 allowed the State to make special provisions for advancement of socially and educationally backward classes of citizens of the Scheduled Castes and Scheduled Tribes. The Untouchability Offences Act of 1955 outlaws discrimination on "the ground of untouchability" in regard to public facilities, eating places, temples, residential choice etc. and provides for fines and imprisonment of offenders. However, relatively small numbers of convictions were made under the Act. In 1976 the Act was strengthened by the Protection of Civil Rights Act which increases punishment and allows for collective fines to be imposed on the offending community and for punishment of civil servants who neglect to investigate such offences. There is a commission, called as Commission for Scheduled Castes, which protects the interests of such people. 15% of seats are reserved in the legislatures and in public services for the Scheduled Castes. The Constitution abolishes untouchability and regards it an offence punishable under the law. The Scheduled Castes have facilities of education, employment, government's liberal financial help. They have

## Spardha Mithra coaching Centre

### Indian Polity and Governance

served as ministers. India had a Dalit head of the state in K.R. Narayanan. Despite all this, twenty-seven officially registered atrocities are being committed against Dalits everyday, police does not permit Dalits from entering police station, refuse the registration of cases by Dalits and regularly resort to the practice of torture against Dalits. Many Dalits do not report crimes for fear of reprisals by the dominant castes, official police statistics averaged over the past 5 years show that 13 Dalits are murdered every week. 5 Dalits' home or possessions are burnt every week, 6 Dalits are kidnapped or abducted every week, 3 Dalit women are raped every day. 11 Dalits are beaten every day and a crime is committed against a Dalit every 18 minutes (Crimes in India. 2005). A recent study on untouchability in rural India, covering 565 village in 11 States, found that public health workers refused to visit Dalit homes in 33% of villages, Dalits were prevented from entering police stations in 27.6% of villages. Dalit children had to sit separately while eating in 37,8% of government schools, Dalits did not get mail delivered to their homes in 23.5% of villages, and Dalits were denied access to water sources in 48.4% of villages because of segregation and untouchability practices. (Shah, Mander & others, Untouchability. in Rural India-2006). Half of India's Dalit children are undernourished, 21% are 'severely underweight', and 12% die before their fifth birthday. (See National Family Health Survey –1998-99).

**(e) Rights of the Scheduled Tribes:** The 2001 census de-scribes 8.2 per cent of our population as the scheduled tribes which percentage keeps on increasing: 6.94 per-cent in 1971 and 7.85 percent in 1981. The Anthropologi-cal Survey of India vide its "Peoples of India Project" informs that there are 635 tribes in India, though the Government recognizes only 426 tribes.

The Constitution and the Government have done a lot to uplift the conditions of the Scheduled Tribes. In the social field, there is equality before the law (Article 14) and special provisions have been made for the advance-ment of socially and educationally backward classes including the Scheduled Tribes (15(4). Article 342 seeks to specify the castes and tribal

## Spardha Mithra coaching Centre

### Indian Polity and Governance

communities in the country so to grant them facilities. The people belonging to tribal communities move and settle anywhere in the country (Article 19(5)). Articles 164 and 338 and the fifth Schedule sets up tribal advisory councils and separate departments, and appointment of a special officer at the centre to promote their welfare and safeguard their interests. Likewise Articles 224 and the sixth schedule makes special provisions for administration and control of scheduled and tribal areas. The Scheduled Tribes are protected from social injustice and from all forms of exploitation (Article 46). There are provisions to give special financial assistance to be charged from the Consolidated Fund of India each year for promoting the welfare of the Scheduled Tribes and development of the Scheduled Areas (Article 275(1)). The people belonging to the Scheduled Tribes have the claims to be appointed in services (Article 335). There are provisions for reservations of seats for the Scheduled Tribes in both Houses of the Parliament and legislative assemblies of the States (Articles 330 and 332). The people belonging to these tribes are protected from atrocities (see Protection of the Civil Rights Act of 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. There exist different plans of upliftment and educational facilities for the Scheduled Tribes. The Commission for the Scheduled Tribes, under Article 338, is supposed to supervise the welfare schemes for these people. And yet the Scheduled Tribes' people are denied their human rights; the Government evicts them from their land in the name of development; their men are paid low wages; they are usually looked down upon, and in the process, they lose their identities: around 200 tribes have not been notified and recognized.

**(f) Other Backward Classes:** Under Articles 340 of the Indian Constitution, it is obligatory for the government to promote the welfare of the Other Backward Classes (OBC). Article 340(1) states, "The President may by order appoint a commission, consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

union or any state to remove such difficulties and as to improve 'their condition and as to the grants that should be made, and the order appointing such commission shall define the procedure to be followed by the commission." Article 340(2) states, "A commission so appointed shall investigate the matters referred to them and present to the President a report stating the facts as found by them and making such recommendations as they think proper." The backward class person is a term used for castes which are economically and socially disadvantaged. The OBC list presented by the commissions (1955, 1980) is usually dynamic and will change from time to time, depending on social, educational and economic factors. The OBCs are entitled to 27% reservations in public sector employment and higher education. The attempts are being made, despite the legal wranglings, to improve the conditions of the people belonging to the OBCs.

**(g) Minority Rights In India:** The 2001 Survey of India gives the following figures of minorities in India: Muslims 11.67 percent, Christians 2.32 percent, Sikhs 1.79 percent, the Buddhists 0.77 percent, Parsees 0.4 percent and the Jains 0.43 percent. The Constitution recognizes, under Schedule VIII, twenty-two languages so to encourage and promote culture, and script as well as languages of the minorities. Article 29 offers protection to the cultural rights of the minorities and Articles 30(1) gives them the right to establish and administer educational institutions of their choice. Clause 30(2) states that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language. The Government of India has set up a commission to protect the rights of the minorities. The Commission's functions include: (a) to evaluate the progress of the development of the minorities; (b) to monitor the working of safeguards provided in the Constitution and in the laws of the legislatures; (c) to make recommendations for the effective implementation of safeguards for the protections of the rights of the minorities; (d) to look into their specific complaints regarding the deprivation of the rights of the minorities. The Commission on Minorities acts as a civil court. And yet, the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

religious minorities' basic rights are violated. T.K. John, explaining the causes, says, The state governments' legislations on freedom of religion are always full of ambiguities which are used to practise discrimination against religious minorities; the state governments have refused to grant official recognition to certain religious communities. The state governments are usually bias against minority religious communities. The minority Christians have been attacked physically while religious conventions are disturbed at numerous places. However. the Supreme Court has upheld the rights of the minorities to protect and promote their culture, script and language by establishing their educational institutions (See State of Bombay v. Bombay Education Society, 1995; Usha Mehta v. State of Maharashtra. 2004: and TMA Pai v. State of Karnataka, 2002).

**(h) Rights of the Elderly:** The population of the elderly persons has been increasing over the years. As per the UNESCO estimates, the number of the aged (60+) was around 590 million in 2005. The figure will double by 2025. By 2025, the world will have more elderly than young people and cross two billion mark by 2050. In India also. the population of elder person has increased from nearly 2 crores in 1951 to 7.2 crores in 2001. In other words, about 8% of the total population is above 60 years. The figure will cross 18% mark by 2025. The UN General Assembly, on December 16, 1991, adopted 18 principles relating to independence, participation and self-fulfillment and dignity of the older persons. Among these principles, mention may be made to (a) older persons should have the opportunity to work and determine when to leave the work force, remain integrated in society and participate actively in the formulation of policies which affect their well-being, have access to health care, should be able to pursue opportunities for the full development of their potential. The Indian Constitution says, vide Article 41 that right to work, to education and to public assistance be provided in cases of unemployment, old age, sickness and disablement. The parents cannot be evicted from a house without due process of law if they have been staying there. There are three enactments:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(i) Under section 125 of the CrPC, a magistrate can order a child to maintain his old parents under the Maintenance of Parents Act.

(ii) The Hindu Adoptions and Maintenance Act says that an aged parent can demand maintenance from children in the same way that a wife can demand it from her husband.

(iii) The Domestic Violence Act too provides parents with the right to seek relief from any kind of abuse.

A National Policy on older persons was announced in January 1999 which identified a number of areas of intervention—financial security, healthcare and nutrition, shelter, education, welfare, protection of life and property for the wellbeing of older persons in the country. A National Council for Older Persons (NCOP) was constituted by the Ministry of Social Justice and Empowerment to operationalize the National Policy on older persons, so to accelerate welfare measures and empowering the elderly in numerous ways beneficial to them. The 2007 Act known as the Maintenance and Welfare of Parents and Senior Citizens would help the elderly people live a dignified life.

**(i) Rights of the Disabled:** Disability, as defined in the **Persons with the Disabilities Act, 1995**, means (i) blindness, (ii) low vision, (iii) leprosy - cured, (iv) hearing impairment, (v) locomotion disability, (vi) mental retardation, (vii) mental illness. The Act asks the appropriate government and local authorities to formulate schemes for ensuring employment of persons with disabilities, and such schemes which may provide for (a) the training and welfare of persons with disabilities; (b) the relaxation of upper age limit; (c) regulating the employment; (d) health and safety measure and creation of non-handicapping environment in places where persons with disabilities are employed: The Disabilities Act seeks the provisions for such assistance for the disabled as: (a) aids and appliances for them; (b) preferential allotment of land, at concessional rates for (a) houses, (ii) setting up business, (iii) establishment for schools. The disabled to have the right to have easy access in railways and buses; seek slopes to be made for wheel chair users; they have the right not to be reduced in rank when in



## Spardha Mithra coaching Centre

### Indian Polity and Governance

employment: preferential treatment in matters relating to educational and employment facilities: nor they would be denied any promotion merely on grounds of disability. There are provisions for giving facilities to the children with disabilities, especially those relating to education. In order to promote employment of persons with disabilities in organized formal sectors, the Act provides for a scheme of quota to the extent of 3% in all government departments (Central and State governments). Significantly, the judiciary has acted in favour of the disabled: some such cases can be cited. In the *National Federation of Blinds v. the State of Uttar Pradesh, 2000*, the Supreme Court held that despite any scheme not existing, the disabled be given preferential treatment. In the *Vijay K. Agarwal v. State of Rajasthan, 2001* the court adjudged Dr. Vijay Agarwal's request valid the provisions of the Persons with Disabilities Act (PDA) be complied with for the disabled. In *Pushkar Singh and Others v. University of Delhi and Others, 1994-95*, the court insisted on 3 percent reservation of seats in appointments for the disabled.

**(j) Right to Food:** In reference to Article 11 of The International Covenant on Economic, Social and Cultural Rights', the fundamental right of every one to be free from hunger has been duly recognized. Paragraph 14 of the above Article adds. "Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger. India is committed to honouring the right to adequate food. Though in free India, the famines have passed into history, yet hunger survives in the form of individual men, women and children, and sometimes entire tribal or dalit communities, living without food for long period of time. They are forced to cutback on their food intakes sometimes reducing to one meal a day, and sometimes eating grasses and mango kernels that do fill their stomachs but no nutrition, they suffer, some times, to see their children painfully sleep on empty stomachs. The governments so far have tended to deny starvation, and been unsuccessful in reversing malnutrition. Before the intervention of the Supreme Court in 2001, they ran many food schemes, but these were not guarantees: they could be withdrawn or reduced, and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

there was no obligation on the State that these schemes must cover all needy people. The Supreme Court changed this, by directing that the governments should not withdraw any food schemes; and that all children in schools be given hot cooked school meals, all children under six years as well as nursing and expectant mothers be given adequate food. The food that law needs to guarantee to every person in India must be nutritious and sufficient for an active and healthy life, be it bonded workers, a disabled or an aged. The Supreme Court, in a significant decision, in *PUCL v. Union of India* (2000-01) held that the people who are starving because of their inability to buy food grains have right to get food under Article 21 and therefore they ought to be provided the same free of cost by the States out of surplus stock lying with the States particularly when it is unused and rotting, and that the foodgrains be provided to all those who are aged, infirm, disabled, destitute women, destitute men, pregnant and lactating women and destitute children. To ensure that no starvation death takes place, the Supreme Court had directed, for example, in May, 2011 that the Union Government release five million tonnes of foodgrains immediately for distribution in 150 most poverty-stricken districts of the country.

**(k) Right to Information Act in India:** In pursuant to the 77th report of the Parliamentary Standing Committee, **The Right to Information Act 2005** was enacted and came into force on October 12, 2005. The Act provides for all the citizens to ensure right to information so to promote transparency and accountability in the working of every public organisation. Derived from the Latin words, 'Formation' and 'Forma', information means giving shape to something and forming a pattern. Information adds something new to our awareness. According to Atal Behari Vajpayee, former Prime Minister of India, information is power and that, he continues, the government wants to share power with the humblest; it wants to empower the weakest. The Act specifies that information means any material in any form relating to the administration, operations or decision of a public authority. Being an aspect of the right to free speech and expression (Article 19(1)), and one that also includes the right to receive and collect information, the right to information, it may be inferred,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

becomes a constitutional right. Information, it should be remembered, is indispensable for the functioning of a true democracy. It is, therefore, necessary that the people be kept informed about what goes on in the country and if the people have to contribute their bit in public affairs, they ought to know and express themselves. Soli Sorabjee says: "Right to Information (leads) to openness, accountability and integrity". Justice Mathew, in *State of Uttar Pradesh v. Raj Narain*, 1975, had said, "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries - - -. Their right to know is derived from the concept of freedom of speech". The *Judges case* (i.e. *S.P. Gupta v. Union of India*, 1982) too emphasized on the right to information. Needless to say that the Right to Information Act 2005 had the blessings of movements such as the Mazdoor Kisan Shakti Sangathan (Rajasthan), way back in the 1990s. The Act defines "right to information" as the right to access information accessible under the Act which is held or under the control of a public authority [Sec. 2 (j)]. Section 3 of the Act provides that subject to the provisions of the Act, all citizens have the right to information. The Act imposes certain obligations. The Act provides for constitution of an executive wing to enforce the right to information conferred on citizens by the Act. Every public authority is required to appoint public information officers ("**PIO**") for providing information to persons requesting information under the Act (Sec. 5). The Information Officer in every public organization is supposed to give information sought by the people. The State and the Central Information Commissions have to supervise and monitor the activities relating to this right. However, it needs to be stated that the Right to Information is not absolute, and the public authorities are exempt from the obligation of disclosure under certain conditions.

#### **8.2 Rights: Ignored or Abused?**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Our discussion on Rights Issues would not be complete if we do not take into account the issues which relate to the malfunctioning of the authorities who are supposed to protect our already specified rights. Some of the abused and misused rights may briefly be stated. The Human Rights situation in India has not been encouraging. The Human Rights Watch stated, in 2010, that India had "significant human rights problems" identifying 'lack of accountability while including police brutality, extra-judicial killing, and torture'.

(a) Despite the state prohibitions against torture and custodial misconduct by the police, the torture is widespread in police custody. The police often torture innocent people until a 'confession' is obtained'. It is stated that about 800 people die after being tortured to death in Indian prisons every year. Custodial rape is not an unusual affair. Police reforms, as directed by the Supreme Court, in the Prakash Singh v. Union of India, 2006, have yet to take a concrete shape.

(b) Human trafficking is a \$ 8 million illegal business in India. Around 10,000 women from Nepal are brought to India annually for commercial sexual exploitation. Each year 20,000-25000 women and children are trafficked from Bangladesh.

(c) Sexual harassment (See Vishaka v. State of Rajasthan 1997), accompanied by violence has become a common feature with cases of acid throwing (See Students of Andhra Pradesh Agricultural University v. Registrar Andhra Pradesh Agricultural University, 1997) .

(d) In India, extra-judicial killings by the police or the security forces are called 'encounter killing', meaning that the killing occurred during an armed encounter between the police or security forces and the victim. The killing by the state forces is most often declared to be defensive, cases of attempted murders and other related offences are registered against the victims, and the cases are closed without further investigation since criminal cases come to an end upon the death of the accused. Despite being 'unnatural death', and the victims having been killed, no investigation

## Spardha Mithra coaching Centre

### Indian Polity and Governance

ensues to determine whether the death was in fact in an actual encounter, nor whether the use, and the extent of use, of force was justified. This is an acknowledged strategy of the state for eliminating certain kinds of opposition to the state and the established order. In Andhra Pradesh, for instance, the naxalites have been the targets; in Punjab, it was the militant; in Mumbai, it is those who are alleged to be part of the underworld. The civil liberties groups, journalists, lawyers are consistently challenging all this over the past two decades.

(e) The burning of Roop Kanwar on the pyre of her husband in Rajasthan, in 1986 has reintroduced Sati. Questions of custom and communal pride have been raised, State action has been. still, an issue. In 1987, the Act was enacted and Sati was made an offence; and the death penalty was introduced as an alternative sentence. The 'glorification' of sati, where a temple is constructed and a dead woman worshipped bringing in money to the family, has also been made punishable. This Act is constantly under contest as denying the right to practice a religion. Though a law prohibiting child marriage has been on the statute books since 1929, it is still performed in many parts of India. For instance, the practice of performing child marriages on Akshaya Teej, it is reported, has not stopped in Rajasthan. It is widely believed that the gang rape of Bhanwari Devi was intended as a lesson, since she was active in preventing child marriages. Another aspect of child marriage was revealed when Ameena, a girl of about 12 years. was married to an old man from Saudi Arabia who was to take her out of the country as his bride.

(f) According to the Human Rights Watch, the dalits and the adivasis continue to face discrimination, exclusion and caste related violence. Though laws and the policies adopted by the Union government provide protection to them, yet the local authorities do not faithfully implement neither the laws nor the policies. These weaker sections of society constitute less than one-fourth of population, they face social stigma and economic hardships. The reservation policy and all affirmative actions do not help them to live a dignified life, the practice of untouchability still

## Spardha Mithra coaching Centre

### Indian Polity and Governance

persists: in Andhra Pradesh. 46 ways of practicing untouchability have been documented; in Kerala, dalits keep facing the wrath of brahmanism; the elevation of the dalits in the panchayat positions is not seen with any favour. There have been cases of the dalits not being allowed to travel in buses while the cases of their being hacked on the highways to death have been reported in the newspapers in numerous parts of the country.

(g) The detention cases speak about the police brutality. At times, the police takes hostage of some suspected people while in other cases, the relatives of the suspected people are kept in jails till such people surrender. This appears to be the practice in most states of India and one that needs further investigation. There have been reports of people spending long years in jail, which could have been averted if prisons were not as inaccessible as they are. Rudul Sah (Rudul Sah v. State of Bihar 1983), the man who spent fourteen years in jail because he had been considered unfit to stand trial, and continued to remain untried despite having been declared fit, is one well-known instance.

(h) The conditions in jails; solitary confinement; the inhuman treatment of prisoners, including their being kept in leg irons, for instance; overcrowding of prisons; the right of prisoners, including undertrials, to vote are issues that have been raised repeatedly over the years. The inadequacy of medical services in prisons, often resulting in the death of prisoners has been much in evidence. Statistics in the Annual Reports of the NHRC reveal that there are a much larger number of deaths in judicial custody than in police custody.

(i) Corruption has been at the centre of attention at various arenas of public life. The Bofors Gun deal, the Enron issue are examples of corruption, to name a few among numerous. The allotment of petrol pumps and gas retail outlets and allotment of commercial plots, and the recent telecommunication issues as well as those related to Commonwealth Games in 2010 are other such examples. The Vohra Committee report (1997) has confirmed what is otherwise known to be a common fact.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(j) Street children have their peculiar vulnerability. In Ban-galore, a study reveals that almost every street child has been sexually violated at some time or another. They are also specially susceptible to drugs. Street children, how-ever, take care of themselves, and often of each other. Women in prostitution have faced the possibility of their children being forcibly separated from them, following an order of the Supreme Court in Gaurav Jain v. Union of India, 1990 A 'raid' conducted by Delhi Police in 1990 (a year after the Gaurav Jain order), in which 112 'children' were picked up from the GB Road area was an indication of what such a power of the police could mean to these women and their children. The above references make it clear that all is not well in polity and society at the front of the prosection of heolders' rights. Those who have been in power, they socially and economically misuse it and abuse it and the result is that those who are weak, they only suffer. Fortunately, the civil society is opening up; the social movements (Anna Hazare's movement (August. 2011) for emphasis on corruption-free society is worth mentioning) are becoming alert and active, and are asserting themselves; public interest litigation and judicial activism are contributing their bit to make the rights of the weak effective and seeking the executive (from the police man to the prime minister) to become relatively more responsible and transparent in the performance of their duties.

## **9. POLITICAL SYSTEM IN INDIA**

Political system in India, as elsewhere, includes not merely the formal governmental structure (executive, legislature and judiciary at the Union, State and the local levels), it also encompasses in itself the informal structure (the political parties, and the like). It is to this formal and informal structure that we now attend to.

### **9.1 Government at the Union Level**

The Union Government consists of the executive (President. Vice-President, Council of Ministers and the like), the legislature (Parliament), and the judiciary (the Supreme Court).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

#### **9.1(i) Union Executive : The President of India:**

The President is the head of the state. The Constitution vests all the executive powers of the Union Government in him (Art. 53) He exercises these powers either ' directly himself or through officers subordinate to him (Art 53).

**I. Qualifications** A candidate for the office of the President (a) must be a citizen of India (b) should have completed 35 years of age (c) must possess qualifications required for membership of the Lok Sabha

(d) must not hold any office of profit under the Government of India. state government or local authority. However, the following offices are not considered as offices of profit (a) President and Vice-President (b) the Governor of a state; (c) Minister of Union or State (Art. 58) The name of a candidate for the post of President must be proposed by 50 electors and seconded by at least 50 electors. He has also to deposit a security of Rs 15,000 for contesting elections.

**2. Election :** The President is indirectly elected through an electoral college consisting of the elected members of both the houses of the Parliament and elected members of all the state legislative assemblies. The Constitution provides that as far as practicable there shall be uniformity. In the scale of representation among the states as a whole and the Union. This is sought to be achieved by providing that every elected member of the legislative assembly of a state shall have as many votes as there are multiples of 1000 in the quotient obtained by dividing the population of the state by the total number of elected members of the assembly (Articles 54, 55) This can be explained in the form of the following formula:

Population of the State

Elected members of State Legislative Assembly If by this division the remainder is 500 or more, it will be counted as one and the vote of each member is increased by one, Likewise, the number of votes which each elected member of Parliament shall be entitled to cast shall be determined



## Spardha Mithra coaching Centre

### Indian Polity and Governance

by dividing the total number of votes of the legislative assemblies of all the states by the total number of elected members of both the houses of Parliament. This can be explained in the form of following formula: Total number of votes assigned to all the elected MLAs / Total number of elected MPs. If in this division the remainder exceeds one-half, it will be counted as one. The election is held through the system of proportional representation by means of a single transferable vote. The candidate receiving absolute majority of the first preference votes is declared elected. However, if no candidate receives an absolute majority of first preference votes, the ballots of the candidate securing the least number of first preference votes are cancelled and his second preference votes transferred. This process is followed till some candidate secures an absolute majority of votes. In the 14th Presidential elections held in July 2012, the contest was between Pranab Mukherjee, a United Progressive Alliance (UPA) supported candidate, and P A Sangma supported by the National Democratic Alliance (NDA) combine. The Presidential election is conducted through a system of proportional representation by means of a single transferable vote. The candidate receiving absolute majority (just more than 50%) is declared elected. In this case, Pranab Mukherjee secured 713555 votes and P A Sangma got 316195 votes according to V K Agnihotri, Returning Officer and Secretary General, Rajya Sabha. Pranab Mukherjee was sworn in as the 13th President of India ( Dr Rajendra Prasad was President twice) on July 25, at an impressive ceremony in Rashtrapati Bhawan.

**3. Disputes Regarding Presidential Election :** All disputes in connection with the election of the President are inquired into and decided by the Supreme Court. and its decision is final. It is noteworthy that the election of the President or the Vice-President cannot be challenged on the ground of existence of any vacancy on whatever reason in the electoral college electing him (See Dr N.B. Khare v. Election Commissioner of India, 1957)

**4. Oath :** Before entering office, the President has to take an oath or an affirmation in the presence of the Chief Justice of India, or in his absence, the senior most judge of the Supreme Court available. In this oath or

## Spardha Mithra coaching Centre

### Indian Polity and Governance

affirmation the President undertakes 'to preserve, protect and defend the Constitution and the law and to devote himself to the service and well-being of the people of India.' (Art. 60)

**5. Term and Emoluments :** The President holds office for a term of five years from the date on which he enters office (Art. 56). He is eligible for re-election (Art. 57). But generally the President does not hold office for more than two terms. So far only one President, Dr. Rajinder Prasad, has held office as President for two terms. The President can resign before the expiry of his term of five years by addressing his resignation to the Vice-President.

In 2008, the Government of India had increased the salary of the President to Rs. 1.5 Lakh every month. About Rs. 22.5 crore budget is spent annually on his/her upkeep. In addition to this he is entitled to other allowances and privileges including free official residence with free electricity and water, telephone, car facilities and secretarial assistance. On retirement, the President is entitled to a pension of rupees nine lakh per annum.

The President's Secretariat is headed by the Secretary, who is assisted by a team of officials. The Secretariat performs tasks relating to constitutional, administrative, hospitality services, petitions on wide-ranging subjects from general public. All matters requiring attention of the President in matters relating to executive powers are received by the Secretariat through the respective ministries. Once the President has assented to the proposed course of action; the files go back to the concerned ministries.

**6. Impeachment :** The President can be removed from office before the expiry of his term through impeachment. Impeachment proceedings can be initiated through a 14 days notice by either house of Parliament on the grounds of violation of the Constitution. After impeachment charges have been framed by one house, the charges are investigated by the other house. If the other house, after due investigation, passes a resolution by a two-third majority of the total membership of the house that the charges have been sustained, the President stands impeached. (Article 61)

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**7. Vacancy :** In case the office falls vacant due to the death, resignation or removal of the incumbent, the Vice-President acts as President. In case the Vice-President is also not available to discharge the duties of the office of the President, the Chief Justice of India acts as President. Thus Chief Justice M. Hidayatullah acted as President of India from 20 July 1969 to 24 August 1969 because V.V. Giri, the then acting President, tendered his resignation to contest presidential election. In the absence of the Chief Justice, the senior most judge of the Supreme Court acts as President. A person who acts as President is entitled to all the powers and privileges of the President. Fresh elections for the office of the President must be held, within six months of the occurrence of vacancy (Articles 65, 62).

**9. I (ii) Powers of the President**

The powers of the President may be studied under the following heads:

**I. Executive Powers** The President is the executive head of the state (Article 53) and all executive actions of the Union Government are taken in his name (Article 77). All important officials of the Union Government are appointed by the President. Some important officials appointed by the President include the Prime Minister, the members of the Council of Ministers, the Chief Justice and judges of the Supreme Court and High Courts, Chairman and members of the Union Public Service Commission (UPSC), Comptroller and Auditor General of India, Attorney General of India, Governors of the States, members of the Finance Commission, ambassadors and so forth.

**2. Legislative Powers** As an integral part of the Parliament under Article 79, the President enjoys important legislative powers. He can summon and prorogue the sessions of the two houses and can dissolve the Lok Sabha (Article 85). He can address both the houses separately or jointly (Article 86). He addresses the first session of the Parliament after the general elections (Article 87). He nominates 12 members to the Rajya Sabha from persons who have distinguished themselves in arts, literature, science, social service and so on. He nominates two members from the Anglo-Indian

## Spardha Mithra coaching Centre

### Indian Polity and Governance

community to the Lok Sabha if this community has not received adequate representation. All the bills passed by Parliament must receive his assent before they become laws. The President can ask the Parliament to reconsider a bill (Article 111 ). If on reconsideration, the Parliament repasses the bill, the President has to give his signature (Article 111 ). Thus, he enjoys only suspensive veto power and it can be applied only to the non-money bills. However, with regard to constitutional amendments the President has no veto power and it is obligatory for him to give assent to such bills. The President can enact laws through ordinances when the Parliament is in recess. In this regard Article 123 of the Constitution provides that if at any time, when both the Houses of Parliament are not in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require. It may be observed that the President can promulgate ordinances only on matters listed in the Union List and the Concurrent List. He can also issue ordinances on residuary subjects as well as the State List if the state is under President's rule. These ordinances possess the force of a law but must be approved by the Parliament within six weeks of its reassembly. It may be noted that the ordinances differ from the Acts of Parliament in three respects viz., they cannot be used for the amendment of the Constitution; they have a temporary character; and they must be replaced by a law of the Parliament.

**3. Financial Powers :** All money bills can originate in the Lok Sabha only on the recommendations of the President (Art 110). The Contingency Fund of India has been placed at the disposal of the President. He can advance money out of this fund to meet unforeseen expenses and recover the same after due authorisation by the Parliament. The President appoints a Finance Commission (Article 280) every five years to recommend distribution of taxes between the Union and State governments.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**4. Judicial Powers :** The President appoints the Chief Justice and judges of the Supreme Court and State High Courts (Articles 124,217). He can grant pardon, reprieve, respite or remission of punishment, or commute the sentence of any person punished under the Union law (Article 72). The President enjoys legal immunity and is not accountable to any court of law for anything done in the exercise of his official duties.

**5. Emergency Powers :** The Constitution vests extraordinary powers in the President to deal with three types of emergencies: (a) emergency due to war or external aggression or armed rebellion (Article 352). (b) emergency arising out of failure of constitutional machinery in the State (Article 356); and (c) emergency arising from threat to the financial stability or credit of the country (Article 360). During emergencies, the President comes to wield such extensive powers that critics of the Constitution describe them as a threat to the democratic system of government.

**6. Military Powers :** As the Supreme Commander of the defence forces of India, the President appoints the chiefs of the Army, Navy and Air Force. He also enjoys the power to declare war and conclude peace.

**Diplomatic Powers :** The President represents the country in international forums. He sends ambassadors to foreign countries and receives their diplomats. All international treaties and agreements are concluded on behalf of the President. However, these treaties and agreements are subject to by the Parliament.

#### **9.1(iii) Position of the President**

Under the parliamentary system of government adopted in India, the President is expected to act as a constitutional ruler. The Constitution provides for a Council of Ministers with the Prime Minister at its head, to aid and advise the President in the exercise of his functions (Article 74). The original Constitution did not specify whether the President was bound by the advice of the Council of Ministers or not, even though it was implied that as a matter of convention prevailing under parliamentary system of government in England, the President would act on the advice of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Council of Ministers. This ambiguity was removed by the 42nd Amendment which clearly stated that the President shall be bound by the advice of the council of ministers. As a result of this change, the President was even denied the role of an advisor or a guide. The position of the President was somewhat retrieved under the 44th Amendment in 1978 which provided that the President can ask the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. Thus the amendment recognized the limited but essential role of the President under the Constitution. He is still able to exercise considerable amount of influence on policy. He enjoys (as does the English king or queen — See Bagehot: English Constitution) the right to be consulted, the right to encourage and the right to warn. In a number of cases the President is still able to make use of his discretionary powers. This includes (i) appointment of a Prime Minister if no single political party enjoys clear-cut majority or does not possess a recognised leader of the party; (ii) dissolution of the Lok Sabha and holding of fresh elections in the event of recommendations of the Council of Ministers after it has been voted out and tendered its resignation; (iii) in the exercise of pocket veto in respect of law passed by the Parliament; (iv) disqualifications of members of the Lok Sabha (v) asking the Council of Ministers to reconsider its decision; (vi) asking the Parliament to reconsider a bill passed 'by it.

The **position** of the President of India is, indeed, not unimportant. He is not a rubber stamp, nor he is a real ruler. He does not, indeed, rule, but he does not either reign. He asserts when it is necessary. It is the President who **preserves, protects** and **defends** the Constitution (Article 60). He does not sin on the dotted lines; he does not rule. but he does see that there is the rule according to the provisions of the Constitution : administration should be carried on in accordance with the institutions as prescribed by the Constitution, and through the fundamental basic rules as stated in the Constitution. As he himself maintains the Constitution. he is not answerable to any court, nor any criminal proceedings can be instituted against him. nor any process for his imprisonment can be instituted against

## Spardha Mithra coaching Centre

### Indian Polity and Governance

him (Article 361). With the coalitional governments, the role of the President in the formation and functioning of the government has become important. particularly after 1989 with the Presidents attempting to use their discretionary powers. President Venkatraman, in 1989 and 1991, President Sharma, in 1996, President Narayanan in 1998 and President Abdul Kalam in 2004 and President Pratibha Patil in 2007, and 2009. faced hung Parliament and used their powers accordingly.

#### **9.2 The Vice-President of India**

The Constitution provides (Article 63) for a Vice-President who is elected by members of the two houses of Parliament in accordance with the system of proportional representation by means of a single transferable vote (Article 66). A candidate for the office of the Vice-President must be proposed and seconded by at least 25 members. He is also required to deposit a security of Rs. 15,000. Election disputes regarding the Vice-President are decided by the Supreme Court.

**Qualifications** A candidate for the office of Vice-President must

1. be a citizen of India;
2. be more than 35 years of age;
3. possess the qualifications prescribed for membership of the Rajya Sabha;
4. be not a member of either house of the Parliament or State Legislature
5. be not a person of unsound mind or insolvent
6. not hold any office of profit under the Union or State government or local authority. (Articles 66)

**Term and Emoluments** The Vice-President holds office for a term of five years from the date on which he enters office (Article 67). He is eligible for re-election. His term can be cut short if he submits his resignation to the President or is removed by the Rajya Sabha through a resolution passed by a two-third majority of its members and likewise agreed to by the Lok Sabha. The Vice-President draws a monthly salary of Rs 1,25,000. In addition, he enjoys several benefits. like free residence, free travel. medical facilities etc. on retirement he is entitled to monthly pension.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**Oath of Office** Before entering upon his office the Vice-President has to take an oath before the President or some other person appointed by him (Article 69).

**Powers :** The Vice-President is the ex-officio chairman of the Rajya Sabha (Article 64) and presides over its meetings. All bills, resolutions, motions or questions can be taken up by the Rajya Sabha only with his consent. He is the chief spokesman of the Rajya Sabha before the President as well as the Lok Sabha. He discharges the functions of the office of the President in case that post falls vacant on account of the death, resignation or removal of the President (Article 65). The Vice-President can act as President for a maximum period of six months because fresh elections for the office of President must be held within six months of the occurrence of vacancy. Similarly, if the President is unable to discharge his functions for some reasons, the Vice-President discharges all his functions.

### **9.3 The Prime Minister and the Council of Ministers**

As the President of India is a constitutional executive head, the real executive authority of the Union is exercised by the Prime Minister and his Council of Ministers.

#### **9.3(i) The Prime Minister**

The office of the Prime Minister has been created by the Constitution. The Prime Minister is appointed by the President (Article 75). Because he/she is appointed as the Prime-Minister, he/she is a minister like any other minister. As much, he/she may not be a member of any House of the Parliament, but has to become a member of either House of the Parliament within six months of his/her assuming the office of the Prime Minister. Generally, the President has no choice in the appointment of the Prime Minister and invites the leader of the majority political party in the Lok Sabha for this office. The Prime Minister theoretically holds office during the pleasure of the President. But the Prime Minister actually stays in office as long as he enjoys the confidence of the Parliament, especially the Lok Sabha. The normal term is five years but it is automatically reduced if the



## Spardha Mithra coaching Centre

### Indian Polity and Governance

Lok Sabha is dissolved earlier. The Prime Minister gets the same salary and allowances which are paid to the members of Parliament. He also receives a constituency allowance like other MPs. In addition, he is also entitled to a sumptuary allowance, free official residence, free travel, medical facilities, etc.

**Powers:** The Prime Minister enjoys extensive powers.

1. The President convenes and prorogues all sessions of the Parliament in consultation with him.
2. The Prime Minister can recommend the dissolution of Lok Sabha to the President before expiry of its normal term.
3. All the members of the Council of Ministers are appointed by the President on the recommendations of the Prime Minister.
4. He allocates portfolios among the various ministers and reshuffles them. He can ask a minister to resign and can even get him dismissed by the President.
5. He presides over the meetings of the Council of Ministers and exercises a strong influence on its decisions.
6. He exercises general supervision over the working of other ministers and ensures that they work as a team.
7. The Prime Minister can bring about the fall of the Council of Ministers if he resigns. He is the pivot around which the Council of Ministers revolves.
8. The Prime Minister is the chief channel of communication between the President and the Council of Ministers and keeps the President informed about all the decisions of the Council of Ministers.
9. He assists the President in the appointment of all high officials.
10. He can recommend to the President, with the concurrence of other cabinet ministers, to proclaim a state of emergency on grounds of war, external aggression or armed rebellion.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

11 . He advises the President about imposition of presidential Nile in the states on grounds of breakdown of constitutional machinery or imposition of an emergency due to financial instability.

The Prime Minister occupies a position of tremendous influence and prestige. But the position of the Prime Minister depends, to a large extent, on his personality and the position of his political party in the Parliament.

#### **9.3(ii) Deputy Prime Minister**

The post of Deputy Prime Minister is not known to the Constitution, although seven persons have occupied this post since the inauguration of the Constitution. Sardar Vallabhbhai Patel was the first Deputy Prime Minister and Home Minister in Nehru's ministry. Morarji Desai was Deputy Prime Minister under Indira Gandhi. Charan Singh and Jagjivan Ram were given this position in Morarji Desai's ministry to defuse the crisis in the Janata Party. Y.B. Chavan served as Deputy Prime Minister during the brief tenure of Charan Singh. Devi Lal became Deputy Prime Minister in V.P. Singh's Janata Dal government of 1989. Finally, Lal Krishan Advani was designated as Deputy Prime Minister by Prime Minister Atal Bihari Vajpayee on 29 June 2002.

The Deputy Prime Minister occupies position next to the Prime Minister. He assists the Prime Minister and discharges his duties when he is not available. It may be observed that the Administrative Reforms Commission of India (1966-70) in its Report on the Machinery of Government and its Procedure of Work recommended the creation of the post of Deputy Prime Minister to ensure effective functioning of the governmental machinery. It suggested that the Prime Minister could allot to the Deputy Prime Minister such tasks and ad hoc assignments as he considers appropriate in order to reduce his workload

#### **9.3(iii) The Prime Minister's Office**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Prime Minister's office (PMO), known as The Prime Minister's secretariat until 1977, provides the secretarial assistance to the Prime Minister. Politically, it is headed by the Prime Minister, and administratively, by Principal Secretary to the Prime Minister. On the official side, the PMO is a link between the Prime Minister and his ministers, the President, the Governors, the chief ministers and foreign signatories; on the public side. it is concerned with the party matters, personal correspondence, complaints from the public. An extra constitutional body. the PMO plays an important role in the decision-making process while provides crucial advice to the Prime Minister in the performance of his functions.

The PMO is, administratively, headed by the Principal Secretary. The office consists of one or two additional secretaries, three to five joint secretaries and a good number of directors/deputy secretaries and under-secretaries. The other officers, in the office. include private secretaries, officers on special duty. social secretary and the junior staff, all around 400 people under its roof. Over the years. the PMO has emerged as a rival centre of power. threatening the role and authority of the Cabinet Secretariat to the extent of almost eclipsing it. This is why the PMO has been described by the critics sometimes as 'super-cabinet' and sometimes as 'super-secretariat'. 'the mini Government of India'.

The role of the PMO changed from prime minister to prime-minister. Nehru. though dependent on the ICS level secretaries. gave limited significance to his officials. During the times of Lal Bahadur Shastri, the PMO became a powerful organ; Smt. Indira Gandhi gave the PMO greater strength. The Janata Party's rule made the PMO into the PM secretariat again. But with Smt. Indira Gandhi again in the position of the prime minister and Rajiv Gandhi. the PMO shot into prominence. The PMO has retained its significance at present.

The Principal secretary to the Prime Minister performs numerous functions which include

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (i) dealing with all the office files.
- (ii) putting before the Prime Minister all documents for orders and instructions.
- (iii) preparing of notes to be discussed by the Prime Minister with important dignatories ;
- (iv) looking after the affairs of different ministries under the charge of prime minister.
- (v) tendering advice to the Prime Minister on matters as sought by him.

The PMO performs numerous functions such as :

- (i) helping the prime minister relating to his over-all responsibilities as head of the government:
- (ii) assisting the prime minister relating to his over-all responsibilities as the chairman of the Planning Commission and the National Development Council;
- (iii) supervising prime minister's public relations and press as well as general public activities;
- (iv) dealing with all references which come up for prime minister's attention;
- (v) maintaining liaison with the President, the Governors, the Chief Ministers, the Union ministers and other foreign dignatories:
- (vi) acting as the think-tank of the prime minister.

**9.3(iv) The Union Council of Ministers**

The Union Council of Minister headed by the Prime Minister is the real executive in the country. The President of India exercises all his powers and performs all his functions with the aid and advice of the Council of Ministers with the Prime Minister at its head, which advice is binding on the President, though he may ask the Council of Ministers to reconsider its

## Spardha Mithra coaching Centre

### Indian Polity and Governance

advice (See Article 74(1) as amended by the 42nd and 44th amendments). It may be remembered that the President has no option but to act on the reconsidered advice of the Council of Ministers. Members of the Council of Minister are appointed by the President on the recommendations of the Prime Minister. Each minister is allocated a department and works under the supervision of the Prime Minister. In this way, their individual as well as political responsibility is towards the Prime Minister; for, no minister can remain in office without the Prime Minister's wishes. All ministers, as a body, are collectively responsible to the House of the People. This responsibility, called the **collective responsibility**, implies that minister work as one unit, one team; they swim and sink together. The ministers are either members of one House of the Parliament or of the other. Most ministers are from the House of the People, though there are also members of the Rajya Sabha (the Council of States) as ministers. Usually, the Prime Minister is a member of the House of the People, but there is no constitutional requirement for him to be so. A non-member of the Parliament can become Prime Minister (See S.P. Anand v. H.D. Deve Gowda, 1997). The UPA government is headed by Dr. Manmohan Singh who is a member of the Council of States. Initially, Indira Gandhi was also a member of the Council of States when she took over as the Prime Minister in 1966. For attaining political homogeneity in a parliamentary democracy, the members of the Council of Ministers belong to the majority political party or the majority coalition. The Council of Ministers is a large body of ministers, consisting of about 80-85 ministers, though 9151 amendment requires that the council's total strength should not exceed 15% of that of the Lok Sabha. Among them, the top category, called the Ministers of Cabinet Rank, consist of about 20 members or so, who hold the charge of important portfolios. Below this, there is a body of ministers, called the Ministers of State, some of whom hold independent charge while others are attached to cabinet ministers. Still below is the body of ministers called the Deputy Ministers, each attached to ministers of the two categories above. Parliamentary secretaries constitute still another category of ministers who help the top ministers in handing the affairs in the parliament. Cabinet

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Ministers, among all the categories of ministers, constitute an important group, though even in this group, there is an inner groups called the kitchen cabinet, or the "inner cabinet" whose members are most important of all ministers. A cabinet meeting is attended only by the ministers of cabinet rank; but the ministers of state can also be invited to attend the meetings.

The salient features of the cabinet system in India are:

- (a) ministers are members of the parliament or they are members of either house within a period of six months;
- (b) they are collectively responsible to the lower house of the Parliament:
- (c) they work as a team:
- (d) they belong to the majority party/parties:
- (e) the proceedings of cabinet meetings are kept secret:
- (f) all ministers work under the leadership of the Prime Minister, who presides over cabinet meetings.

The Council of Ministers performs very important functions:

- (a) it formulates and determines all policies of the government:
- (b) it conducts the administration of the Union Government;
- (c) it recommends all major appointments;
- (d) it prepares the national budget:
- (e) it advises the President on all matters of administration;
- (f) it takes the final decisions regarding administration;
- (g) it conducts and regulates foreign relations;
- (h) it helps make all government regulations.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

#### 9.3(v) **The Working of the Parliamentary/ Cabinet System: The President, The Prime Minister,**

The Council of Ministers The parliamentary cabinet system. as adopted in India, has two executives: the President of India, as the head of the State, is the constitutional head, while the prime minister, as the head of the government. is the real head who as the chairman of the Council of Ministers aids and advises the President in the exercise of his functions and whose advice is binding on the President. Though the President may ask the Council of Ministers to reconsider the advice, it is obligatory for the President to act on the reconsidered advice The functions of the Prime Minister as laid in Article 78 of the Constitution are much less than what he really does.

He is not merely a communicator, conveying the decisions of the Council of Ministers to the President and the proposals. if any, of the President to the Council of Ministers with regards to the affairs of administration and the legislative policies; but he is. in fact. the chief adviser of the President; and the chief spokesman of the government both in and outside the Parliament. He is not there merely to furnish information relating to the administration and legislation which the President may call for, or to submit to the Council of Ministers any matter which the President may want to be considered but is a link between the constitutional head and the real executive. The Prime Minister is much more than what he she is described in Article 78 of the Constitution. Within a parliamentary form of executive which India has. the Prime Minister is the official who makes and unmakes the government; the one who supervises the functioning of all ministries, the one who presides over modernizing the country its policies, its innovations. The Prime Minister is not merely a leader of the majority party. but is also the leader of the Parliament and. through it. the leader of the nation.

The fact is that the personality of the Prime Minister makes a lot of difference in his/her position vis-a-vis his/her ministerial colleagues—a powerful prime minister may be like a shining moon among less shining, stars, while a weak prime minister may be just the first among equals

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(primus inter pares). Nehru was much more than a mere Prime Minister. This is why he was able to build numerous institutions of democracy. Supported by equally powerful personalities who presided over numerous ministries, he was able to democratize the system. Shastri following Nehru, worked in true spirit of cabinet system and allowed the ministers to work as a team. Indira Gandhi, with her unique style of leadership, led the nation in most, if not all, cases single-handedly. Unlike Nehru, she was possessive. Rajiv Gandhi sought to follow the style of both his grandfather Nehru and mother, Indira Gandhi. All the Prime Ministers, during the periods of coalitional governments, had to work, and in fact, did work, under the constraints of their supporting political parties. Relationship between the President and Prime Ministers over the years has gone well, in the sense that the Presidents have realized their position as the constitutional head and hence worked well with their Prime Ministers who hold their offices as popular leaders. A Rajendra Prasad -Nehru controversy over the Hindu Code Bill in the early years of the republic and the Zail Singh-Rajiv Gandhi relationship over Article 78 in 1987 may be exceptions.

The Council of Ministers as a body of different types of ministers, within the framework of the parliamentary system of India is the real administrator. The President appoints the ministers, but on the advice of the Prime Minister. The ministers are in office during the pleasure of the President, which, in effect, means the confidence of the Parliament, especially of the House of the People. Legally, ministers are responsible to the President and politically to the Prime Minister; but in actual practice, to the House of the People. The real task of the Council of Minister is :-

- (a) to evolve policies at the ministerial level;
- (b) to formulate policies at the cabinet level;
- (c) to approve policies at the Parliament level; and
- (d) to execute policies at the government level.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

It is because of this task that the Council of Ministers helps make laws through the Parliament, executes laws, conducts administration, makes appointments, prepares budget, and conducts foreign relations.

The cabinet system seldom works as the prime-ministerial system unless there is a heavy weight Prime Minister. India has witnessed cabinet system of various levels. Professor M.P. Singh (The Union Executive) refers to three such levels:

(a) pluralist parliamentary level when the Prime Minister worked together with his/her ministers, seldom dominated them and usually consulted them, as during the times of Nehru and Shastri.

(b) Neo-patrimonial parliamentary level when the Prime Minister dominated ministers lowering the Council of Ministers into the prime minister's office as during the times of Indira Gandhi, especially between 1971-76.

(c) Federal parliamentary level when, as during the coalitional era after 1989. Prime Ministers worked with their ministers (usually imposed upon them) under constraints of political parties supporting the government.

The Council of Ministers consists of a number of Ministries/ Departments: their number and character vary from time to time on factors such as

(a) volume of work and importance attached to certain items.

(b) changes of orientation.

(c) political expediency. Under the Government of India (Allocation of Business) Rule, 1961, we had the following ministries on December 18, 2011.

#### **Performance Management-Result Framework Document**

Pursuant to the announcement made in the President's address to both Houses of the Parliament on June 4, 2009, the Prime Minister approved the outline of the Performance Monitoring and Evaluations System (PMES) for Government Department on September 11, 2009. Performance

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Management Division in the Cabinet Secretariat is responsible for this activity through the mechanism called Results Framework Document (RFD). At the beginning of each financial year, with the approval of the Minister concerned, each Department is required to prepare a Results-Framework Document (RFD) consisting of the priorities set out by the Minister concerned, agenda as spelt out by the Government from time to time. The Minister in-charge decides the interse priority among the departmental objectives.

The RFD seeks to address three basic questions:

- (a) what are department's main objectives for the year'
- (b) what actions are proposed to achieve these objectives?
- (c) how would someone know at the end of the year the degree of progress made in implementing these objectives. i.e. what are the relevant success indicators and their targets?

RFDs are discussed and finalized by the Minister Department after thorough discussion with the Ad hoc Task Force (ATF) consisting of retired civil servants, domain experts, and leading management experts. This process helps the Ministries/Departments in arriving at realistic performance targets. The RFDs so reviewed are approved by the High Power Committee (HPC) on Government performance headed by the Cabinet Secretary.

At the end of the year, all ministries/departments required to review and prepare a report listing their respective achievements against the agreed targets in the prescribed format. This report is expected to be finalized by the 1st of May each year.

All the ministries and departments covered under phase 1 finalized their Results-Framework Documents (RFD) for the last quarter of 2009-2010 and assessed their achievements for this period.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

In the subsequent phase of implementations of this initiative. 62 departments and ministries have prepared their Results-Framework Documents for 2010-11, which have been reviewed by the ad hoc task force and approved by the High Power Committee on Government Performance.

In this phase, following new dimensions were added:

- (a) Each of the 62 departments/ ministries was required to prepare a long-term strategy for their respective organizations. It was argued that while RFD ensures that things are done right, i.e., they are done effectively and efficiently, a long-term strategy is required to ensure that right things are getting done. Thus a departmental strategy is a complement to the RFD.
- (b) Each department was also asked to prepare a citizen's/ client charter outlining the standards of service their client, can expect.
- (c) All departments were also expected to adopt a world class Grievance Redress Mechanism meeting the "Sevottam" standards.
- (d) Each department was asked to develop a RFD with their subordinate, attached and autonomous organizations under them. The total member of such organizations is estimates to be 760.

From the year 2011-12 onwards, as many as 72 ministries/ departments have finalised Results-Framework Documents. In addition to the performance management through results-framework document, PMD of the Cabinet Secretariat has also undertaken various initiatives relating to overall improvement in the functioning of the Government department.

#### **9.4 Cabinet Committees, Cabinet Sec-retariat and Central Secretariat**

The Council of Ministers works through its committees. There is the cabinet secretariat with cabinet secretary at its head to help the Council of Ministers in general and the cabinet in particular to help in the administration of the country.

**9.4(1) Cabinet Committees :** Cabinet committees assist the smooth functioning of the Cabinet (the Council of Ministers). The committees,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

though informal, are basically organizational devices to increase the output. They help reduce the work of the cabinet. In fact, they wield real power of making decisions on general policy matters. The cabinet committees are of two types: standing, and adhoc. There are about 10 standing cabinet committees. Adhoc cabinet committees are set up by the prime minister as and when required. At present on 19.04.2012, the following cabinet committees are in vogue

- (1) Appointment Committee of the Cabinet
- (2) Cabinet Committee on Accommodation
- (3) Cabinet Committee on Economic Affairs
- (4) Cabinet Committee on Parliamentary Affairs
- (5) Cabinet Committee on Political Affairs
- (6) Cabinet Committee on Prices
- (7) Cabinet Committee on Security
- (8) Cabinet Committee on WTO matters
- (9) Cabinet Committee on Infrastructure
- (10) Cabinet Committee on unique Identification Authority of India related issues.

Any subject requiring the decision of the cabinet may either be referred to the concerned committee or a new cabinet committee may be formed for the purpose. These committee are usually chaired by the Prime Minister or the Home Minister. The membership of the cabinet committee varies from three to eight and may even include a non-member of the cabinet. Usually, the important cabinet ministers are members on such committees. The Cabinet Committees have proved extremely beneficial to the work of the Cabinet. As government business has increased both in amount and complexity the elaborate network of Cabinet Committees has acted as a clearing house. The device of the Cabinet Committee enables the ministers to bargain and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

compromise with each other and thus reduce pressure of work upon the Cabinet. Consequently, the Cabinet is left free to devote itself to more important matters. The committee system safeguards the principle of collective responsibility, which is an essential feature of the cabinet system. Thus, ministers who are not members of the cabinet are members of one or more committees. Therefore, all ministers continue to be partly responsible for the government's action. Also, cabinet committees greatly increase the effectiveness of political control over public services. It creates a close contact between politicians and public servants and ensures that those who formulate policy are reasonably well informed. It also eliminates the possibility of any one department carrying a disproportionate weight of opinion.

**9.4(2) Cabinet Secretariat :** The Constitution of India provides for a parliamentary system of government with Cabinet as the real executive. The Cabinet headed by the Prime Minister is responsible for the entire administration of the government of India (central administration). In this task, the Cabinet is assisted by the Cabinet Secretariat. The Cabinet Secretariat is a staff agency to the Union Cabinet. It operates under the direction and leadership of the Prime Minister of India. It has an important coordinating role in the process of policy-making at the highest level in the central government. The Cabinet Secretariat enjoys the status of a Department of the government of India under the Allocation of Business Rules 1961. It is headed politically, by the Prime Minister and administratively the Cabinet Secretary.

**Organisation :** The Cabinet Secretariat has three wings —Civil wing, Military wing and Intelligence wing. The civil wing is the main wing and provides aid, advice and assistance to the Union Cabinet. The military wing of the department provides secretariat assistance to the defence minister's committee, the military affairs committee, the chiefs of staff committee, national defence council and other committees dealing with defence issues. The intelligence wing deals with matters pertaining to the Joint Intelligence Committee of the Union Cabinet.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

In 1988, the Directorate of Public Grievances was set up as an organ of the Cabinet Secretariat. It is headed by a Director having the rank of a Secretary to the Government of India. It deals with public grievances relating to the following organizations of the Central Government.

- \* Departments of railways, telecommunications and posts
- \* Ministries of surface transportation, civil aviation and urban development
- \* Insurance and banking division of the Department of Economic Affairs of the Ministry of Finance
- \* Directorate General of Shipping and Port Trusts, Delhi Transport Corporation, Indian Airlines and Air India.

Below and under the Cabinet Secretary, there are a large number of other secretaries to assist him in the discharge of his functions and responsibilities. These secretaries belong to various ranks ranging from Secretary to an Under Secretary. In addition, the Cabinet Secretariat has subject related advisors to the Prime Minister.

The **functions** of the **Cabinet Secretariat** are:

- (1) It prepares the agenda of the cabinet and provides the necessary information and material for its deliberations.
- (2) It keeps a record of the discussions and decisions of the Cabinet and Cabinet Committees and circulates them to all the concerned ministries.
- (3) It provides Secretariat assistance to the Cabinet Committees – Political Affairs Committee (described as super cabinet), Economic Affairs Committee, Appointments committee (all the three are chaired by the Prime Minister) and Committee on Parliamentary Affairs (chairman-Home Minister).
- (4) It keeps the President, the Vice President and all the Central Ministers informed of the main activities of the Central Government.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(5) It prepares and finalizes the rules of business of the government and allots the business of the government among ministries/departments of the Union Government with the President's approval.

(6) It functions as the chief coordinating agency in the Central Government. In this respect, it settles disputes between the ministries.

(7) It supervises the implementation of Cabinet decisions by the concerned ministries/departments and other executive agencies.

(8) It handles the work pertaining to appointment and resignation of ministers, allotment of portfolios to the ministers and organization and re-organizations of ministries.

The **Cabinet Secretary** is the administrative head of the cabinet secretariat. Being secretary of the cabinet secretariat, he, as a rule, attends the meetings of the cabinet and is present in all the cabinet committees.

- (a) provides assistance to the Council of Ministers;
- (b) acts as advisor and conscience keeper of the civil services;
- (c) handles senior appointments;
- (d) prepares of the agenda of the Cabinet;
- (e) attends the meetings of the Cabinet;
- (f) ensures that the Cabinet decisions are implemented;
- (g) advises the Prime Minister;
- (h) acts the Chairmen of the Committee of Secretaries on Administration;
- (i) acts as the Chairman of the Chief Secretaries Committee; and
- (j) provides an element of continuity and stability.

The Cabinet Secretary is always close to the Prime Minister who, in fact, is the official under whom the Cabinet Secretariat works. As Cabinet Secretary, he is the ex-office chairman of the Civil Services Board, and thus the head of the Indian Administrative Service. As a matter of convention, the senior most civil servant is appointed as a Cabinet Secretary. He or she belongs to the Indian Administrative Service. The incumbent generally has tenure of 2 to 3 years. He is, in fact, India's most powerful bureaucrat.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**9.4(3). Central Secretariat:** The Central Secretariat is organizationally a collection of various ministries and departments. A ministry does the job of formulation of the policy concerning the ministry together with its execution and review. Each ministry is subdivided into sub-groups with an officer in charge of each of them

The lowest of the above units is the Section Officer under whom there are a number of assistants, clerks, typists, and peons. The section deals with the work relating to the subject allotted to it. It is also referred to as the office. Two sections constitute the branch which is under the charge of an under secretary, also known as the branch officer. Two branches ordinarily form a division which is normally headed by a deputy secretary. When the volume of work in a ministry exceeds the manageable charge of a secretary, one or more wings are established with a joint secretary in charge of each wing. At the top of the hierarchy comes the department which is headed by the secretary himself or in some cases by an additional/special secretary. In some cases, a department may be as autonomous as a ministry and equivalent to it in rank. A ministry is under minister's charge while the department is under secretary's charge. A ministry may not have a department or may have one or more departments. A ministry may have two or more secretaries, each in charge of a specified segment of the Ministry's work, or of a department in it. but there is, in addition, one Secretary who is head of, and represents the entire ministry. Although all of them are secretaries, the former are subordinate to the latter who, in addition to his own work, coordinates the work of these secretaries of departments/ segments of work within the ministry. The three grades such as Secretary, Additional Secretary and Joint Secretary constitute the 'top' management while the Deputy Secretary and Under Secretary are referred to as the 'middle' management. The Secretary is the administrative head of the ministry/department and the principal adviser to the Minister. He represents his ministry/department before the committees of Parliament. He is supposed to keep himself fully informed of the work of his ministry/department by demanding weekly summaries on the nature of cases disposed of by lower levels and the manner of their disposal. Where



## Spardha Mithra coaching Centre

### Indian Polity and Governance

the charge of a Secretary is too large. he may be assisted by a joint or additional secretary who formally functions as Secretary in relation to the subject allotted to him in the ministry/department. The function of the latter is to relieve the Secretary of a bloc of work and to deal, where necessary, direct with the minister. The Secretary, however, is invariably kept informed of all these direct dealings with the Minister, for he is not formally relieved of his responsibility as head of the ministry/department. The deputy secretary is an officer who, as his designation implies, acts on behalf of the Secretary. He should dispose of as many cases as possible on his own. Only on more important cases he should, in fact, must, seek the Secretary's instructions either by referring to him in writing or discussing with him orally. The under-secretary disposes of minor cases on his own. He submits more important matters to the deputy secretary in such a way that the latter is able to deal with them quickly.

It must be stressed here that the functionaries, at these different levels, are supposed to perform their functions, keeping in mind the interest of the Government of India as a whole. The Secretary, in other words, is the Secretary to the Government of India. not to his minister alone.

**Function-wise**, the Secretariat. firstly, provides data about policies and makes them available to the ministers who formulate policies. Secondly, the secretariat assists the ministers in their legislative work too. It prepares legislative drafts to be introduced in the legislature. Thirdly. it engages in the collection of relevant information for answering parliamentary questions, and, also, for various parliamentary committees. Fourthly, it carries out a detailed scrutiny of a problem bringing an overall comprehensive viewpoint on it, getting approval, if required, of other related agencies like the Ministry of Law and the Ministry of Finance; and also, consulting other organizations concerned on a particular matter. The Secretariat is the clearing house preliminary to governmental decisions. Fifth/y, it functions as the main channel of communication between the Government and other concerned agencies like the Planning Commission. Finance Commission, etc. Sixthly. the Secretariat also ensures that field

## Spardha Mithra coaching Centre

### Indian Polity and Governance

offices execute, with efficiency and economy, the policies and decisions of the Government. Seventhly it makes sectoral planning and programme formulation; and lastly, it does the following miscellaneous jobs:

- (a) budgeting and control of expenditure in respect of activities of the ministry/department.
- (b) securing administrative and financial approval to operational programme and their subsequent modifications.
- (c) supervision and control over the execution of policies and programmes by the executive departments or semi-autonomous field agencies.
- (d) initiating steps to develop greater personnel and organizational competence both in the ministry/department and its executive agencies.
- (e) assisting in increasing coordination at the Central level.

All over the country, there is a network of administrative or executive agencies which are meant to execute policies as decided in the Secretariat. These include, among others, (i) attached offices, (ii) subordinate offices, (iii) departmental undertakings, (iv) companies as registered under the Companies Act; (v) Corporations or Boards set up under the Act of the Parliament (such as ONGC, Tea Board), (vi) societies as registered under the Societies Act (i.e. the Institute of Foreign Trade). These executive agencies mainly do the job of execution in the implementation of policies. The executive agencies have increased in number over the years. though their powers have remained relatively the same as of before. This is what has led to the strained relations between the secretariat and the executive agencies leading at times to the duplication of work on the one hand. and delay on the other.

Spardha Mithra coaching Centre  
Indian Polity and Governance

## 10. THE GOVERNMENT OF THE STATES

### 10.1 The Governor

Article 153 says that there shall be a Governor for each state whereas Article 154 says that all the executive powers of the State shall be vested in the Governor who would exercise them either himself or through officers subordinate to him. However, the Governor's functions can be increased and the Parliament or the State legislature can confer by law any function to any authority subordinate to Governor. The Governor is **appointed** by the **President** (Article 155). There can be one Governor for two or more states (Article 153). Article 156 says that the term of office for the Governor is 5 years and he may continue in office till his successor enters upon his office, notwithstanding the five-year term. The Governor holds office during the pleasure of the President who can also transfer him to any other State. According to Article 157, that any person can be eligible for appointment as Governor who is a citizen of India and has completed the age of thirty-five years. He is not to be a member of either House of the Parliament or a House of the State legislature and if he is so, his seat would be regarded as vacant. When he enters upon the office of the Governor, he is not to hold any office of profit. His oath or affirmation (under Article 159) prescribes that he would preserve, protect and defend the Constitution and the law.

The Constitution vests in the Governor all the **executive powers** of the State Government. He or she appoints the Chief Minister who enjoys the support of the majority in the **Vidhan Sabha**. He or she also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the Chief Minister. He or she also makes other major appointments of the State. The Council of Ministers remains in office during the 'pleasure' of the Governor, but in the real sense it means the pleasure of the Vidhan Sabha. As long as the majority in the Vidhan Sabha supports the government, the Council of Ministers cannot be dismissed. The Governor also appoints the Advocate General (Article 165) and the chairman and members of the State Public Service Commission (Article 316). He or she is consulted by the President in the appointment of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

judges of the High Court and he or she appoints the judges of the District Courts. The Governor has certain **legislative powers** as well. The Governor summons the sessions of both Houses of the State legislature and prorogues them. He or she can even dissolve the Vidhan Sabha. These powers are formal and the Governor while using these powers must act according to the advice of the Council of Ministers headed by the Chief Minister. He or she inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. His or her address on these occasions is generally meant to outline the new policies of the State government (Articles 174, 175, 176). A bill which the State legislature has passed, can become a law only after the Governor gives his or her assent to it. He or she can return a bill to the State legislature, if it is not a money bill, for reconsideration (Article 200). However, if the State legislature sends it back to him or her for the second time, he or she has to give his or her assent to it. The Governor has the power to reserve certain bills for the President (Article 200). When the State legislature is not in session and the Governor considers it necessary to have a law, then he or she can promulgate ordinances (Article 213). These ordinances are submitted to the State legislature at its next session. They remain valid for no more than six weeks from the date of State legislature is reconvened. To grant pardon, reprieve, remit the punishment relating to a matter to which the executive power extends, are Governor's judicial powers (Article 161). A money bill (Governor's **financial power**) is introduced in the **Vidhan Sabha** only with his prior permission.

Normally, the Governor has to act on the aid and advice of the Council of Ministers headed by the Chief Minister. However, there are situations when he or she has to act as per his or her own judgment and take decisions on his or her own. These are called the **discretionary powers** of the Governor. He or she exercises them in the following cases:

**(a) In the appointment of the Chief Minister of a State (Article 164).** When no party gets a majority in the **Vidhan Sabha**. The Governor exercises his or her own wisdom and can either ask the leader of the single

## Spardha Mithra coaching Centre

### Indian Polity and Governance

largest party or the consensus leader of two or more parties (that is, a coalition party) to form the government. He or she then appoints him as Chief Minister.

**(b) In informing the President about the failure of constitutional machinery in a State (Article 356).** The Governor can send a report to the President informing, him or her that the governance of the State cannot be carried out as per the provisions given in the Constitution of India and advises the President to impose President's rule in that State. Such a situation has arisen in every State in India at one time or the other. The Governor, then, acts as an agent of the President and rules on behalf of the President.

**(c) In reserving certain bills for the consideration of the President (Article 200).** The Governor can reserve bills after having been passed by the State legislature for the President's consideration if he or she feels the need to do so.

Like the President, it is Governor who preserves, protects and defends the Constitution and the law. In normal circumstances, the Governor has to act as a constitutional and nominal head, thanks to the parliamentary traditions as adopted in India. But when emergency is declared, especially under Article 356, the Governor rules the State on the dictates of the Union Government and in the name of the President. Things worked well until the same political party ruled at the Centre and the State levels. But with different political parties in power, there arose demands for state autonomy. The results have been: Centre-State tensions, so came different commissions, reviewing the Centre-State relations.

### **10.2 The State Council of Ministers (Cabinet) and the Chief Minister**

Article 163 of the Constitution says that there shall be a Council of Ministers with the Chief Minister as its head to aid and advise the Governor in the exercise of his functions except those where he exercises his discretion. This Article also says that the advice given to the Governor by the Council of Ministers would not be questioned in any court of law. This

## Spardha Mithra coaching Centre

### Indian Polity and Governance

is clear from Article 163 that the Governor, in normal circumstances, acts on the advice of the Council of Ministers. normal circumstances mean circumstances where the Governor has no discretion. But where he has the discretionary powers. the Governor acts on his own.

Before the Council of Ministers is constituted, the Governor has to appoint the Chief Minister (Article 164) who is usually the person who commands the majority support in the State legislative assembly. After the appointment of the Chief Minister, the Governor appoints other Ministers on the recommendations of the Chief Minister. The State Council of Ministers exercises all the executive powers in the name of the Governor, formulates policy with regard to the State administration, makes recommendations with regard to all the major appointments in the State. carries on the State administration, and helps make legislations in the State. The Council of Ministers is collectively responsible to the State legislative assembly.

The Chief Minister in the State is like the Prime Minister at the Centre, the real executive head in the State. He presides over the meetings of the State cabinet, allocates departments among the State ministers, and supervises their functioning. He is a link between the Governor and the State Council of Ministers. Article 167 of the Constitution prescribes the following duties of the Chief Minister:

- (i) To communicate to the Governor all decisions of the State Council of Ministers relating to administration.
- (ii) To furnish such information relating to the administration and proposals for legislation as the Governor would call for.
- (iii) To submit, if the Governor so requires, for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council of Ministers.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The position of the Chief Minister in the State is almost like that of the Prime Minister at the Union level. The Chief Minister is the head of the government in the State while the Governor is the head of the State.

## **II. THE LEGISLATURE IN INDIA**

The main function of legislature in a democratic system is to make laws. In addition to this, the legislatures control the executive and finances of the state. They represent the people and provide a forum where the grievances of the people are heard and addressed to. In India, the legislature at the Union level consists of two Houses: the Council of States and the House of the People. In states, some states have two chambers—the Legislative Assembly and the Legislative Council. others have only one chamber, the Legislative Assembly.

### **11.1 The Indian Parliament**

#### **1.1(i) The Council of States**

The Indian Parliament, Article 79 says, consists of the President and the two Houses: (a) the Council of States, the upper house. and (b) the House of the People. the lower or the popular house.

The total strength of the Council of States is 250. out of which twelve, distinguished in the field of literature, science, art and social service. are nominated by the President and the remaining two hundred and thirty eight are the representatives of the States and the Union Territories, elected in accordance with the provisions prescribed in the Fourth Schedule, i.e., to be elected by their respective state legislative assemblies on the basis of the population of the States : larger the State more are its representatives in the Council of States, smaller the State, less are its representatives in the Council of States (Uttar Pradesh 31 representatives, Maharashtra 19. Manipur 1. Sikkim 1, for example). At present, there are 245 members in the Council of States; 233 from the States and 12 nominated by the President. Article 83 makes it clear that the Council of States is not to be dissolved, but one-third of its members retire every two years. In

## Spardha Mithra coaching Centre

### Indian Polity and Governance

accordance with Article 84, the qualifications for a Council of States (Rajya Sabha) members are that the candidate should be (a) a citizen of India, (b) not less than thirty years of age, (c) should possess such other qualifications as may be prescribed by Parliament from time to time.

#### **11.1(ii) The House of the People**

The House of the People, also called the Lok Sabha, is the lower house of Parliament, directly elected by the people. Its total strength is 550; 530 members elected by the people from states, 20 from the Union Territories and two nominated by the President; if he is satisfied that the Anglo-Indian community has not been properly represented. Here also, the larger the state, the more are its members in the House of the People (Article 80). Article 83 prescribes the tenure of the House of the People as five years, unless dissolved earlier; during emergency, its tenure can be extended for a period not exceeding one year. Article 84 prescribes qualifications of the members of the House of the People which are similar to those of the Council of States except that for the candidate of the House of the People, the minimum age has to be 25 years. The Lok Sabha members are 545 at present.

#### **11.1(iii) Disqualifications and Vacation of Seats**

A person shall be disqualified for election as a member of Parliament (Article 102):

- (i) if he holds an office of profit under the Government of India or the Government of a State, other than an office declared by Parliament by law not to disqualify its holder;
- (ii) if he is of unsound mind and is so declared by a competent court;
- (iii) if he is an undischarged insolvent;



## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iv) if he is not a citizen of India. or has voluntarily acquired the citizenship of a foreign state. or is under acknowledgement of allegiance or adherence to a foreign state;

(v) if he is so disqualified by or under the law of Parliament. Through the Representation of Peoples Act (1951), the Parliament has specified certain other disqualifications: one should not be guilty of an election offence; one should not have undergone imprisonment for two or more years: one should not have been dismissed from government service, one should not have been guilty of inciting communal feelings, and one should not have been preaching or practicing untouchability. In addition to the above. disqualifications would follow (See 91' Amendment. 2003) if one has violated the defection law (Tenth Schedule), absented himself for a period of sixty days from the meetings of either of the two Houses without permission (Article 101). The seat of a member of Parliament is considered vacant if one has dual membership in Parliament or if one's election is declared void by a court or if one is expelled by the House.

#### **I 1.1(iv) Presiding Officers of Parliament**

The Speaker presides over the meetings of the House of the People (Article 94) and the Vice-President, as the ex-officio chairman, presides over the meetings of the Council of States (Article 89). The Council of States elects its Deputy Chairman and the House of the People elects its Speaker and Deputy Speaker for conducting the proceedings of the respective Houses. The Deputy Chairman presides over the meetings of the Council of States in the absence of the Chairman. Likewise, the Deputy Speaker presides over the meetings of the House of the People in the absence of the Speaker. There is a provision for the office of speaker Pro Tem who is appointed by the President and who is usually the senior most member of the House of the People after general elections. After the Speaker is elected, speaker Pro Tem vacates the office. This is done at the first sitting of the House of the People after it is constituted following general elections. The presiding officers of the Houses of Parliament supervise the legislative proceedings, maintain decorum and discipline in the House, interpret the rules of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

procedures and parliamentary precedents; adjourn the House in the absence of quorum, and exercise their casting vote.

#### **11.1(v) Houses: Their Working**

The two chambers of the Parliament function in a manner as prescribed by rules and regulations. They observe traditions and work through their officials. The usual practices in the Parliament can be briefly described as under:

**Officials** There is a leader of the House in the House of the People (Lok Sabha), usually, the Prime Minister. There is a leader of the House in the Council of States, usually a minister of cabinet rank. Deputy Leaders of the Houses are also nominated. These leaders help conduct business in the House. In each House, there is a leader of the opposition, usually the leader of the largest opposition party, who provides constructive criticism of the policies of the government. Each political party in each House of the Parliament controls its respective party members through their officials, called the Party Whip. Party whip is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against particular issues. He regulates and monitors their behaviour in the Parliament. The members are supposed to follow the directives of the whip. Otherwise, disciplinary action is taken.

**Sessions of Parliament** The **summoning** of the sessions of Parliament is done by the President (Article 85). He can pro-rogate either House of the Parliament. He also has the power to dissolve the House of the People, usually on the advice of the Prime Minister, but not of one who has lost a confidence vote in the House. The Constitution says that the duration of gap between meetings of the house should not exceed six months.

**Adjournment** means suspension of work. When suspension of the work is done for a specified time, say a few hours, days or weeks, it is called adjournment, but when it is done without specifying definite time; it is called adjournment **sine die**. Both types of adjournment are ordered by the

Spardha Mithra coaching Centre  
Indian Polity and Governance

presiding officers of the Houses. **Prorogation** means terminating the sittings for the period of the session. This is done by the President, without affecting the fate of bills pending before the House. **Dissolution** is the termination of the House for the period of its regular tenure. It means new elections. This is done by the President; only in the case of the House of the People. The Council of States is not dissolved. In case the House of the People is dissolved, the position with respect to the pending bill is given as following:

- (i) A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
- (ii) A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses,
- (iii) A bill not passed by the two Houses due to disagreement and if the President has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse,
- (iv) A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse,
- (v) A bill passed by both Houses but pending assent of the President does not lapse.
- (vi) A bill passed by both the Houses but returned by the President for reconsideration of Houses does not lapse.

**Quorum** of each House is one-tenth of its total membership.

**Devices of Parliamentary Proceedings Questions are:** Categories of Questions are:

- (i) Starred Questions : These questions have to be answered orally on the floor of the House. They carry an asterisk mark.
- (ii) Unstarred Questions : These questions are answered in a written form. They do not carry the asterisk mark.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iii) Short Notice Questions : These questions pertain to matters of urgent public importance and can be asked with notice of less than ten days.

**Question Hour** The first hour of the sitting in both Houses of Parliament is known as Question Hour. During the Question Hour, members of Parliament have the right to ask questions on administrative and governmental policies related to national and international matters. Questions asked in the Houses are generally addressed to ministers. These questions can be categorized as Starred Questions, Unstarred Questions or Short Notice Questions. A member has to give a notice to the Secretary-General of the concerned House that he wants to ask a question.

**Zero Hour** It is the time immediately after the Question Hour in both Houses of Parliament. It starts at 12 noon. It came to be called an "Hour" also, because very often it continues for one full hour, until the House rises for lunch at 1 p.m. However, the duration of the "Zero Hour" has varied over the years. It is not possible to predict what kind of matters might be raised during "Zero Hour" as there is no mention of any "Zero Hour" in the rules of Parliament. It is the press which coined the term "Zero Hour" during the early 1960s, when the practice of raising urgent matters of public importance without prior notice developed.

**Half-an-Hour Discussion** "Half-an-Hour Discussion" can be held on a matter of sufficient public importance, which has been the subject of recent questions in the Lok Sabha. Usually, the discussions take place in the last half-an-hour on Mondays, Wednesdays and Fridays. In one session, a member is allowed to raise not more than two half-an-hour discussions.

**Motions** A member may introduce a motion in the form of a proposal. It is, thus, a proposal for eliciting or expressing the opinion of the House on a matter of public importance. Every question to be decided by the House must be proposed as 'Motion'. The consent of the Speaker or the Chairman is an essential to initiate a motion. A Motion passes through four stages;

(i) Tabling of the motion

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (ii) Posing of questions by the Speaker Chairperson
- (iii) Debate or discussion on permissibility of the motion
- (iv) Vote or decision of the House

Government motions generally aim at obtaining approval of the House for some policy or action. Motions moved by private members focus on eliciting opinion of the House on a particular matter. Motions fall into three categories : substance, substitute. subsidiary A substance motion is moved in lieu of an original motion. It proposes an alternative to the original motion. A subsidiary motion is a follow-up motion on some proceeding in the House. Subsidiary motions have no relevance independent of the original motion. Subsidiary motions are further divided into three categories:

- (i) Ancillary motion,
- (ii) Superseding motion, and
- (iii) Amendment.

**Call Attention Motion** It is the right of every member ( with prior consent of the Speaker or the Chairman) to call for the attention of a minister on a matter of urgent public importance. This unique Indian concept of 'Calling Attention' allows members to highlight failure or inadequate action of the government on an important matter of public importance. This procedural device is similar to an adjournment motion without its censure aspect. The minister is allowed to make a brief statement or request a later date for making a statement.

**Adjournment Motions** In Parliamentary parlance. "adjournment" means a break or termination of debate on a motion/ resolution/bill in the House. It may also mean a brief break during a sitting of the House. Adjournment sine die means termination of the sitting without any definite date being fixed for the next sitting.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**No-day-yet-named Motion** If the Speaker admits notice of a motion but no date is fixed for its introduction, then it is called a "No-day-yet-named motion". It is placed before the Business Advisory Committee, which allots the time for discussion on the motion. Government motions get precedence over private members' motions, as 'No-day-yet-named motions' are discussed at the government's time.

**No Confidence Motion** The changing political composition of Parliament has led to a new procedure known as the **Motion of Confidence** in the Council of Ministers. This practice has evolved in recent times and takes place whenever no single political party is in a position to command the majority of the House. The procedure followed is as follows: a one-line motion under Rule 184 "that this House expresses its confidence in the Council of Ministers" is moved by the Prime Minister on the direction of the President. The Council of Ministers remains in office as long as it enjoys the confidence of the Lok Sabha. If the Lok Sabha expresses a lack of confidence in the Council of Ministers, the Government is constitutionally bound to resign. In order to ascertain the confidence, the rules provide for moving a motion to this effect, which is called a Confidence motion. A motion of No-confidence, once admitted, has to be taken up within 10 days of the leave being granted. The Rajya Sabha is not empowered to entertain a motion of No-Confidence.

**Censure Motion** A censure motion is a distinct type of no-confidence motion. While a motion of a no-confidence need not specify any ground on which it is based, a censure motion must reveal the ground on which it is based. This type of motion is moved specifically for censuring the government's certain policies actions. A censure motion can be moved against the Council of Ministers or a minister for the failure to act or not to act or for a policy, and may express regret, indignation or surprise of the House at the failure of the minister.

#### **1 I.1(vi) Legislative Procedures in**

#### **Parliament**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The draft of a legislative proposal is known as bill. No bill, whether it is introduced by the government or a private member, can become a law or an Act of Parliament until it receives the assent of the President.

Broadly, there are two types of bills:

(i) **Government Bill:** A bill is known as a government bill if it is initiated by the minister.

(ii) **Private Members' Bill:** If a bill is sponsored by a member (a member who is not part of the Council of Ministers is referred to as a private member) in either House of Parliament, it is known as a private members' bill.

Although most laws are proposed through government bills, private members' bills serve the purpose of highlighting changes needed in existing laws or the need for a particular legislation. Bills may be further classified on the basis of their content. The classification is as follows:

(a) **Ordinary Bill:** Any bill which is not a Constitution amendment bill or a money bill is known as an ordinary bill. The following are the different types of ordinary bills.

(i) Original bills (embodying new proposals, ideas or policies),

(ii) Amending bills (to modify, amend or revise existing Acts),

(iii) Consolidating bills (to consolidate existing law on a particular subject),

(iv) Expiring laws (Continuance) bills (to continue an expiring Act), and

(v) Bills to replace ordinances issued by the President.

**(b) Money and Financial Bills:** Money and financial bills are treated separately from other bills, because of their special features.

**(c) The Constitution (Amendment) Bills :** These refer to bills that seek to amend the Constitution.

### Legislative Procedure

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**Ordinary Bill** An ordinary bill has to pass through different stages before it becomes a law. In both the Houses, the bill goes through:

**First Reading** During the first reading, the bill is introduced by the minister in-charge of the concerned department after the Speaker grants permission to do so. The bill is then published in the Gazette of India. If the bill has already been published in the gazette with the Speaker's assent, the stage of introducing the bill in the House can be bypassed.

**Second Reading** The second reading is the most vital stage for the bill because the same is scrutinized thoroughly during this period. This reading is divided in two stages:

**The First Stage** At this stage, only the proposals of the bill are discussed. There is no in-depth discussion about the details of the bill. The bill may be referred to a Select Committee of the Lok Sabha, or a Joint Committee of the Houses with the concurrence of Rajya Sabha, and/or may be circulated for eliciting opinion. The committees are appointed on a temporary basis in order to consider Bill referred to them.

At this time, either of the two Houses might refer the bill to departmentally related Joint Standing Committee of both Houses. This committee considers the bill clause by clause and its members can move amendments to various clauses. The committee can also take evidence of experts, associations or public bodies who are interested in the subject. After each clause and schedule has been considered and adopted by the committee, the Lok Sabha secretariat prepares a report. This report is presented to the House for its consideration.

**Eliciting Opinion** If a motion is passed in Parliament requiring a bill to be circulated to elicit the opinions of local bodies, associations, individuals or institutions, the secretariat of the House circulates letters to all State governments and Union Territories asking them to publish the bill in their respective local gazettes. The period for eliciting opinion is generally mentioned in the motion. If no motion is made, the State governments have to send the opinions within three months of the motion adopted. The



## Spardha Mithra coaching Centre

### Indian Polity and Governance

opinions are then tabled in Parliament. The bill again goes through the committee stage. At this point, the House can debate on the bill as reported by the committee. The debate is confined to the bill as reported by the committee.

**The Second Stage** After the House decides to debate the bill as reported by the committee, the members discuss each clause of the bill separately. They can also amend the clauses. This is a long process where each clause and amendment is discussed, adopted or rejected by the House. If an amendment is accepted, it becomes a part of the bill.

**Third Reading At this stage**, the bill is discussed solely to determine whether to approve or reject it. Only certain verbal, formal consequential amendments are allowed to be moved at this stage. In order to pass an ordinary bill, simple majority of members present and voting is required.

Once the bill has been approved by the originating House, it is sent to the other House. It goes through all the stages again. In case a bill is passed by the originating House but rejected by the other House, the President has the power to call a joint sitting of the two Houses. The decision to accept or reject a bill is taken by the majority of the total number of members of both Houses present and voting.

After both the Houses of Parliament pass a bill, it is presented to the President for his assent. If the President does not agree to sign the bill, he can send it to the originating House with his suggestions. If the two Houses of the Parliament pass the bill again with or without incorporating the suggestions of the President, he has to give his assent. However, the President generally acts on the advice of the Council of Ministers, so he generally does not withhold his assent. He has the right to seek information and clarification about the bill. If the President gives his assent, the bill becomes an Act.

**Money Bill** According to the Constitution of India (Article 110), a bill is considered to be a Money **Bill** if it contains provisions dealing with all or any of the following matters:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of money borrowed by the Government of India or a guarantee given by the Government of India. The bill can also consider amendment of the law with respect to financial obligations undertaken or to be undertaken by the Government of India;
- (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund;
- (d) the appropriation of moneys out of the Consolidated Fund of India;
- (e) the declaring of a new item to be expenditure charged on the Consolidated Fund of India. Also, if there is any increase in the amount of any such expenditure;
- (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or the issue of such Money or the audit of the accounts of the Union or of a State; or
- (g) any matter incidental to any of the matters specified in subclauses (a) to (f).

A Money Bill can only be introduced in the Lok Sabha on the recommendation of the President. However, the Speaker of the House has the final authority to decide whether a bill is a Money Bill or not. A Money Bill cannot be introduced in Rajya Sabha nor can it be referred to a Joint Committee of Houses or be considered at a joint sitting of the two committees.

Once a Money Bill is passed in the Lok Sabha, it is sent to the Rajya Sabha. The Rajya Sabha may not amend a Money Bill, but can recommend amendments. A Money Bill should be returned to the Lok Sabha within 14 days or the bill is deemed to have been passed by both Houses in the form it was originally passed by the Lok Sabha. The Lok Sabha has the discretion to accept or reject the amendments recommended by the Rajya

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Sabha. The President does not have the power to return a Money Bill for reconsideration. He has to give his assent to the Money Bill as passed by the Parliament.

**Financial Bill** A bill relating to revenue or expenditure is a financial Bill. Those Bills which make provisions for any of the matters specified in the Money Bills but do not contain solely those matters are known as Financial Bills. For example, a Bill contains taxation clause. but does not deal solely with taxation. Financial Bill also includes matters involving expenditure from the Consolidated Fund of India.

The difference between a Money Bill and a Financial Bill is merely technical. All Financial Bills are not Money Bills. A Financial Bill is considered to be a Money Bill solely when it contains matters specified in the Constitution for a Money Bill. Only those Financial Bills would be considered as Money Bills, which are certified by the Speaker.

A Financial Bill, which contains any matter specified for a Money Bill but does not deal exclusively with such matters, has two features in common with a Money Bill:

- (i) It cannot be introduced in the Rajya Sabha:
- (ii) It cannot be introduced only with the recommendations of the President.

But, if the financial bill is not classified as a Money Bill, the Rajya Sabha has full powers to reject or amend it as it does in the case of an Ordinary Bill. In the case of disagreement over a bill between the Houses, the President can call for a joint sitting to resolve the deadlock.

A Financial Bill, which involves expenditure from the Consolidated Fund of India, is treated in the same manner as an Ordinary Bill. Hence, it can be introduced in both Houses and the Rajya Sabha has full power to reject or amend it. It also does not require the recommendations of the President for its introduction. However, the President's recommendation is necessary before the Bill can be passed by both the Houses.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**Appropriation Bill** As the name suggests, an Appropriation Bill seeks to give legal authority to the government to appropriate expenditure from the Consolidated Fund of India. The Constitution says that no money can be withdrawn from the Consolidated Fund without the enactment of a law by the Parliament. A bill that incorporates demands for grants voted by the Lok Sabha as well as expenditures charged on the Consolidated Fund, is introduced in the Lok Sabha. This bill is known as the Appropriation Bill. It is passed in the same manner as any other bill. But no amendments can be proposed to the bill. After the bill is passed by the Lok Sabha, the Speaker certifies it as a Money Bill. The Rajya Sabha can make recommendations over the bill but it does not have the power to amend or reject the bill. Therefore, the bill is presented to the President for his assent.

**Finance Bill** A Finance Bill incorporates financial proposals of the government for the following year. It is ordinarily introduced in the Lok Sabha every year, immediately after the budget is presented. Discussions on the bill are restricted to matters relating to general administration and local grievances within the sphere of responsibility of the Union Government. No discussion is permitted on the details of particular estimates. This bill has to be considered and passed by the Parliament and assented to by the President within 75 days after its introduction. This bill is certified as a Money Bill. Thus, Rajya Sabha can only make recommendations to the bill. It is up to the Lok Sabha to accept or reject such recommendations.

#### 1 1.1 (vii) Budget

A budget is an "annual financial statement" or an estimate of receipts and expenditure of the Government of India. It is presented for the ensuing financial year, which at present begins on the first of April every year. The budget includes an estimated inflows and outflows of the government for three years. It gives the actual expenditure for the preceding year, the revised estimates for the current year and the budget estimates for the next year. The pre-budget Economic Survey is prepared by the Finance Ministry. The survey studies the overall economic development in the country. It

## Spardha Mithra coaching Centre

### Indian Polity and Governance

mainly focuses on areas like banking capital markets, prices, industry, agriculture and infrastructure. Other topics include trends in Gross Domestic Product (GDP). demand and supply factors. fiscal developments, to name a few.

The overall responsibility of preparing the budget rests with the Budget Division within the Finance Ministry. The division takes cognizance of the availability of funds as well as proposals from numerous departments and ministries. It also consults the Comptroller and Auditor-General. The budget needs the approval of the Prime Minister before it can be presented in the Lok Sabha. The President decides on which day the budget is to be presented. By convention, it is presented on the last day of February.

The Budget is presented in two parts :

- (i) **Railway Budget**, pertaining to the Railway finance:
- (ii) **General Budget**, which gives an overall picture of the financial position of the Government of India, excluding the Railways.

The Railway Budget and the General Budget are presented in the Lok Sabha by the Minister of Railways and the Minister of Finance. respectively. The speech announcing the General Budget is divided into two parts:

**Part A** : dealing with the general economic survey of the country; and

**Part B** : containing the taxation proposals for the ensuing financial year.

Following the budget presentation. the annual financial statement relating to the Government of India duly authenticated by the Finance Minister) is laid on the table. Also, the Finance Bill is introduced at this time.

The procedure of the approval of the general budget involves numerous steps. These are:

**(a) Presentation of Budget:** The Finance Minister introduces the budget in the Lok Sabha. in February. with a speech giving an overview of the budget. A copy of the budget is laid on the table of the Rajya Sabha at the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

conclusion of the Finance Minister's speech in the Lok Sabha. There is no discussion of the budget on the day on which it is presented.

**(b) Discussion on Budget:** The Parliament allots the time for a discussion after the presentation. The Budget is discussed in two stages—a general discussion followed by a detailed discussion and voting on the demands for grants. Besides, there are other opportunities for further discussions on financial proposals during the consideration and passing of the Appropriation Bill and Finance Bill. The Rajya Sabha is restricted to discussing the budget in general terms.

**(c) Voting on Demands :** After the prescribed period of debate is over, the Speaker uses his power to stop all discussions and puts all outstanding demands for grants to a vote. This power is known as "Guillotine." A voting on demands is the exclusive power of the Lok Sabha. The demands for grants are subjected to Cut Motions by members of the Lok Sabha.

**(d) Appropriation Bill:** This bill is introduced after all demands for grants are passed by the Lok Sabha. The bill paves the way for the enactment of an Appropriation Act and is certified as a Money Bill. It allows the government to withdraw money from the Consolidated Fund of India.

**(e) Finance Bill:** This bill includes all taxation proposals including amendments, and paves the way for enacting the Finance Act.

A brief description of Vote on Account. Demands for Grants and types of Cut Motions is given below;

(i) **Vote on Account:** If the budget is not approved by the first of April or the current financial year, the Indian Constitution allows the Lok Sabha to grant a Vote-on-Account. Generally, the passage of budget crosses the beginning of the financial year and it becomes necessary for the government to have enough funds to run the administration of the country. So, the government uses the special provision, of Vote on Account which empowers the Lok Sabha to make a grant in advance for a part of the financial year, pending the completion of the budgetary process.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Normally, the Vote on Account is granted for two months for a sum equivalent to one-sixth of the estimated expenditure for the entire year under various demands for grants. During an election year, the Vote on Account may exceed that period. This provision is invoked once a general discussion on the budget is over and before the discussion on demands for grants is taken up. In the case of the Railway Budget, which is passed before 31' of March, no Vote on Account is needed, except during an election year.

(ii) Demand for Grants : Demands for Grants can be defined as requests by the executive to the Lok Sabha for authority to spend the amount asked for. Thus, they are related to the expenditure part of the budget. The demands have to be made in the form of a motion. Members may disapprove of a policy pursued by ministry or suggest measures for economy in the administration or focus attention of the ministry to specific local grievances. Members can do so by moving subsidiary motions, called Cut Motions.

(iii) Types of Cut Motions : There are three types of Cut Motions. \* Disapproval of Policy Cut: This is the most drastic of them all because it says "that the amount of demand be reduced to Re.1". A member of Parliament has to give precise reasons for such a cut. \* Economy Cut: This motion means that a member would like to reduce expenditure by making a specific cut in the grant demanded. The form of this motion is "that the amount of demand be reduced to Rs....."

\* Token Cut: This motion is widely used by members. Its objective is to voice a grievance for which the Government of India is responsible. The motion says "that the amount of the demand be reduced to Rs.100."

Hence, Cut Motions are tools to initiate a discussion on Demands for Grants. Once the discussions are over, the cut motions are disposed of. Thereafter, the demands for grants are put to a vote of the House.

#### **I I.1(viii) Powers and Functions of Parliament: Its Role**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The two Houses of the Indian Parliament perform important functions and exercise significant powers. **Legislative powers and functions** of the Parliament extend to making laws on subjects contained in the Union List, Concurrent List and Residuary subjects. In certain cases, the Parliament can make laws on subjects in the State List. The two Houses have some legislative powers : an ordinary bill can originate in any of the Houses, but to become a law, it must be passed by both Houses. In the event of a disagreement between the two Houses on an ordinary bill, the President, under Article 108, may convene joint meeting of the two Houses (to be presided over by the Speaker of the House of the People), and decision may be taken by a majority of the total members of both Houses present and voting. So far, three such joint meetings have been held. The Council of States has the exclusive power, under Articles 249 and 312; to authorise the Parliament to make laws : (a) on a subject in the State List. (b) to create a new All-India Service. **Executive powers and functions** of the Parliament include control over the ministers by asking questions, supplementary questions and passing adjournment motions. During the period of the 14th Lok Sabha (2004 -2009), as many as 85448 questions were asked. Sixty four members of the Lok Sabha had never asked any question. Among them were members, such as L.K. Advani, Atal Bihari Vajpayee, Mamta Banerjee, H.D. Deve Gowda, Ajit Singh and actors Govinda and Dharmendra (see Hindustan Times, dated 26.2.2009). It is the House of the People which can force the Council of Ministers to resign by passing a vote of no-confidence. **The financial powers** of the House of the People are more than those of the Council of States. A money bill originates in the House of the People and after it is passed there, it goes to the Council of States which has fourteen days to consider the bill. The House of the People may accept or reject the recommendations and its decision effectively means the passing of the money bill from both Houses (Article 109). **The electoral powers and functions** of the Houses are, by and large, equal : both participate in the elections of the President and the Vice-President. In **amending the Constitution**, the two Houses possess equal powers as they do in **approving the emergency provisions**. By way of conclusion, it may



## Spardha Mithra coaching Centre

### Indian Polity and Governance

be stated that the House of the People, by being a popularly elected House, has an edge over the Council of States. though the latter has exclusive powers with respect to Articles 249 and 312.

Though the Lok Sabha, as a popularly elected House, enjoys more powers than the Rajya Sabha. it would be injudicious to regard the Rajya Sabha as an insignificant chamber. The Rajya Sabha is important in so far as it acts as the second chamber: helps reconsider hasty and rashly discussed bills. delays when it is necessary, deliberates matters of national importance. represents the federating units, contributes its role to the development of the nation, relieves the burden on the first chamber by initiating and discussing relatively less important bills. The Parliament, as the legislative organ of the country. has, as Granville Austin ( Working of a Democratic Constitution : A History of the Indian Experience) points out, united "Indians into one mass electorate having universal adult franchise, by providing for the direct representation of the voters in genuinely popular assemblies". The Parliament represents the mass of Indians, uniting them all on one platform irrespective of their diversities : it is one forum where all speak as Indians. As a legislative body which makes laws on subjects contained in the Union List and; on residuary powers. on subjects in the concurrent list, if it finds necessary, and on subjects in the State List during abnormal times. However our Parliament is not as supreme a legislative body as the British Parliament. thanks to the constraints of a quasi-federal polity which we have adopted. The Indian Parliament is not a sovereign legislative body because its laws can be declared void if they are contrary to the Constitution : the framers of the Indian Constitution did not intend making the Parliament a supreme legislative body, but they did make the Constitution as the supreme law of the land. The Parliament's authority to amend the Constitution has, of late, been admitted by the Supreme Court, and yet it has been barred from interfering with the 'basic structure' of the Constitution. The power of judicial review 'too' restricts the power and position of the Parliament. The compulsions of politics have made the executive organ of the government dominant over the legislative organ. The ever-enhancing powers of the executive have hijacked the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

powers of the legislature: the more agonized and disciplined a majority political party is. the more are its chances of making the legislature its annexe. The power of delegated legislation has served to strengthen the position of the executive at the cost of the legislature. The legislature's powers are. by and large. on the decline, relegating to the stature of either debating society or a platform ventilating the grievances of the people. Relationship between the executive and the legislature, in any form of polity, whether parliamentary, presidential or semi-parliamentary, is always important in governance. The Indian President. as the constitutional head, is part of the Parliament (See Article 79): As such, he/she convenes the sessions of the Parliament, prorogues it and dissolves the Lok Sabha (Article 85); he/ she has the right to address and send messages to Parliament (Article 86): he/she assents bills to make them laws (Article 111); he/she promulgates ordinances during the recess of Parliament (Article 123). But the President does not participate in the proceedings of Parliament, nor can he/she stop a bill from becoming a law—at best he/she can send the bill back for reconsideration of the Parliament, but he/she has to sign the bill when it is presented again for his/her assent. The President cannot refuse to give assent to a money bill, though his/her prior permission is necessary for the introduction of the money bill in the House of the People (Lok Sabha). The President does have real powers relating to Parliament and legislation, but theoretically all powers are vested in him./her as the head of the state. i.e., as the constitutional head. Relationship between the real executive (the Council of Ministers headed by the Prime Minister, as in India) in the parliamentary system of government on the one hand and the Parliament on the other is more important. In our country, the President appoints the Prime Minister who commands or can command the majority support of the Parliament, especially the House of the People, though the Prime Minister may not be the member of the Lok Sabha as Dr. Manmohan Singh is not. The President also appoints other members of the Council of Ministers on the advice of the Prime Minister. As members of the Council of Ministers headed by the Prime Minister is collectively responsible to the House of the People, the ministers are taken

## Spardha Mithra coaching Centre

### Indian Polity and Governance

from the Parliament (those who are not members of parliament must seek membership of either House of the Parliament within six months of assuming office) and are responsible, as a team, to the Lok Sabha, and individually, to the Prime Minister. The Parliament controls ministers by asking questions, supplementary questions, and moving and passing adjournment motions. A censure motion, cut-or-motion, a vote of no-confidence by the House of the People leads to resignation of the Council of Ministers. Thus, the real executive (i.e.. the Council of Ministers in India) is not only a part of the Parliament, but is also accountable to it. As part of the Parliament, the Council of Ministers with the leadership of the Prime Minister, gets legislations and budgets passed by the Parliament with the majority support, and ultimately makes the Parliament work in the way it wants: instead of controlling the Council of Ministers, the Parliament is controlled by the Council of Ministers. The working of Parliament in India has witnessed, broadly speaking, three different phases:

- (a) Parliament under one-party majority governments,
- (b) Parliament under minority governments, and
- (c) Parliament under coalitional governments.

The first phase, under Nehru and Indira Gandhi as prime ministers, had a parliament which worked at the dictates of the Congress Party : Parliament was Congress, and the Congress was parliament, with the executive controlling the proceedings of the Parliament. The second phase, under Charan Singh, Chandra Shekhar, Narasimha Rao, Deve Gowda, and I.K. Gujral as prime ministers, found the executive relatively weak and the Parliament active, if not assertive. The third phase, under Atal Behari Vajpayee and Dr Manmohan Singh as prime ministers, found the executive working under constraints of the supporting political parties, sometimes conciliative.

#### **I I.1(ix) Committees of Parliament**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The two Houses of the Parliament work through committees. There are committees in each House, and there are joint committees of the two Houses.

**Ad-hoc and Standing Committees** Parliamentary committees are of two kinds : Ad hoc Committees and Standing Committees. Ad-hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. Principal ad-hoc committees are Select and Joint Committees on bills. Others like the railway convention committee, the committee on draft five year plans and the Hindi equivalents committee were appointed for specific purposes. Apart from the ad-hoc committees, each House of Parliament has standing committees. like the business advisory committee, the committee on petitions. the committee of privileges and the rules committee.

**(i) Select and Joint Committees:** When a bill comes up before a House for general discussion, it is to refer it to a select committee of the House or a joint committee of the two Houses. A motion has to be moved and adopted to this effect in the House in which the bill is tabled for consideration. In case the motion adopted is for a reference of the bill to a joint committee, the decision is conveyed to the other House requesting it to nominate members of the other House to serve on the committee. The select or joint committee considers the bill clause by clause just as the two Houses do. Amendments can be moved to various clauses by members of the committee. The committee can also take evidence of associations, public bodies or experts who are interested in the bill. After the Bill has, thus, been considered, the committee submits its report to the House. Members who do not agree with the majority report may append their minutes of dissent to the report.

**(ii) Committee on Estimates :** This committee consists of 30 members who are elected by the Lok Sabha every year from among its members. A minister is not eligible for election to this committee. The term of the committee is one year. The main function of the committee on estimates is to report what economies, improvements in organisations, efficiency, or

## Spardha Mithra coaching Centre

### Indian Polity and Governance

administrative reform, consistent with the policy underlying the estimates may be effected and to suggest alternative policies to bring about efficiency and economy in the administration. From time to time, the committee selects such estimates pertaining to a ministry or a group of ministries or the statutory and other government bodies as it may deem fit. The committee also examines matters of special interest which may arise or come to light in the course of its work or which are specifically referred to it by the House or the Speaker.

**(iii) Committee on Public Undertakings :** The Committee on Public Undertakings consists of 15 members elected by the Lok Sabha and 7 members of the Rajya Sabha. A minister is not eligible for election to this committee. The term of the committee is one year, and its functions are:

(a) to examine reports and documents of Public Under-takings;

(b) to examine reports, if any, of the Comptroller and Auditor General on public undertakings;

(c) to examine in the context of the autonomy and efficiency of public undertakings whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices or not; and

(d) such other functions vested in the committee on public accounts and the committee on estimates in relation to the public undertakings as are not covered by clauses (a), (b), and (c) above, and as may be allotted to committee by the Speaker from time to time. The committee does not, however, examine matters of major government policy and matters of day-to-day administration of the undertakings.

**(iv) Committee on Public Accounts:** This committee consists of 15 members elected by the Lok Sabha and 7 members of the Rajya Sabha are associated with it. A minister is not eligible for election to this committee. The term of the committee is one year. The main duty of the committee is to ascertain whether the money granted by Parliament has been spent by the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

government "within the scope of the demand" or not. The appropriation accounts of the Government of India and the audit reports of the Comptroller and Auditor General mainly form the basis for the Committee's examination. Cases involving losses, nugatory expenditure and financial irregularities come in for severe criticism by the committee. The committee is not concerned with questions of policy. It is concerned only with the execution of the policy laid down by the Parliament and its results.

**(v) Business Advisory Committee (Lok Sabha):** The Business Advisory Committee of the Lok Sabha consists of 15 members including the Speaker who is ex-officio Chairman. Members are nominated by the Speaker. Almost all sections of the House are represented on the committee as per the respective strength of parties in the House. The function of the committee is to recommend the time that should be allotted for discussion of such government legislative and other business as the Speaker, in consultation with the Leader of the House, may direct to be referred to the committee. The committee, on its own initiative, may also recommend to the government to bring forward particular subjects for discussion in the House and recommend allocation of time for such discussions. The decisions reached by the committee are unanimous in character and representative of the collective view of the House. The committee generally meets at the beginning of each session and thereafter as and when necessary.

**(vi) Committee on Private Members' Bills and Resolutions (Lok Sabha):** This committee consists of 15 members and the Deputy Speaker is its chairman when nominated as a member of the committee. The committee is nominated by the Speaker. The functions of the committee are to allot time to private members' bills and resolutions, to examine private members' bills seeking to amend the Constitution before their introduction in the Lok Sabha. to examine all private members' bills after they are introduced and before they are taken up for consideration in the House and to classify them according to their nature, urgency and importance into two categories namely, category A and category B, and also to examine such private members' bills where the legislative competence of the House is challenged.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The committee, thus, performs the same function in relation to private members' bills and resolutions as the business advisory committee does in regard to government business. The committee holds office for a term not exceeding one year.

**(vii) Rules Committee (Lok Sabha):** The Rules Committee consists of 15 members including the Speaker who is ex-Officio Chairman. Members are nominated by the Speaker. The committee considers matters of procedure and conduct of business in the House and recommends amendments or additions to the Rules of Procedure and Conduct of Business in the Lok Sabha that are necessary.

**(viii) Committee on Privileges (Lok Sabha):** This committee consists of 15 members nominated by the Speaker. Its function is to examine every question involving a breach of the privilege of the House or of members of any committee thereof referred to it by the House or by the Speaker. It determines the reference to the facts of each case whether a breach of privilege is involved or not and makes suitable recommendations in its report.

**(ix) Committee on Petitions (Lok Sabha):** It consists of 15 members nominated by the Speaker. A minister is not nominated to this committee. The function of the committee is to consider and report on petitions presented to the House. Besides, it also considers representations from individuals and associations, on subjects which are not covered by rules relating to petitions and gives directions for their disposal.

**(x) Committee on Subordinate Legislation (Lok Sabha):** The committee consists of 15 members nominated by the Speaker. A minister is not nominated to this committee. The committee scrutinises and reports to the House whether the powers to make regulations, rules, sub-rules and by-laws, conferred by the House or delegated by the Parliament are being properly exercised by the executive within the scope of the delegation or not.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

**(xi) Committee on Government Assurances (Lok Sabha):** This committee consists of 15 members nominated by the Speaker. A minister is not nominated to this committee. While replying to questions in the House or during discussions on bills, resolutions, or motions, etc., ministers at times give assurances or undertakings either to consider a matter or to take action or to furnish the House further information later. The functions of this committee are to scrutinize the assurances, promises, and undertakings given by ministers from time to time and to report to the Lok Sabha on the extent to which such assurances have been implemented and to see whether such implementation has taken place within the minimum time necessary for the purpose or not.

**(xii) Joint Committee on Offices of Profit :** This committee consists of 15 members. Ten members are elected from the Lok Sabha and five from the Rajya Sabha. The committee is constituted for the duration of the Lok Sabha. The main functions of the committee are to examine the composition and character of committees and bodies appointed by the Central and State governments and to recommend what offices should disqualify and what offices should not disqualify a person for being chosen as, and for being, a member of either House of Parliament under Article 102 of the Constitution.

**(xiii) Committee on Welfare of the Scheduled Castes and Scheduled Tribes:** The committee on welfare of the Scheduled Castes and Scheduled Tribes consists of 20 members elected by the Lok Sabha and 10 members elected by the Rajya Sabha are associated with it. The term of the committee is one year. A minister is not eligible for election to this committee. The main functions of the committee are to consider all matters concerning the welfare of the Scheduled Castes and Scheduled Tribes, falling within the purview of the Union Government and the Union Territories, to consider reports submitted by the National Commission for Scheduled Castes and Scheduled Tribes and to examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control.



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**(xiv) Railways Convention Committee :** The Railways Convention Committee is an ad-hoc committee. It consists of 18 members. Out of these, 12 members are from the Lok Sabha nominated by the Speaker and six members are from the Rajya Sabha nominated by the Chairman. By convention the Minister of Finance and the Minister of Railways are members of the committee. Besides, ministers of state in the ministries of finance and railways are its members. The main function of the Committee is to review the rate of dividend payable by the railways undertakings to general revenues as well as other ancillary matters in connection with the railway finance vis-a-vis is general finance and make recommendations thereon.

**(xv) Committee on Empowerment of Women:** This committee came into being on April 29, 1997, as a consequence of identical resolutions adopted by both the Houses of Parliament on the occasion of International Women's Day on March 8, 1996. The committee consists of 30 members, 20 nominated by the Speaker from among members of the Lok Sabha and 10 nominated by the Chairman, Rajya Sabha, from among members of the Rajya Sabha. The term of the committee is one year. The committee has been primarily mandated with the task of reviewing and monitoring the measures taken by the Union Government in the direction of securing gender equality, status and dignity in all matters.

**(xvi) Departmentally related Standing Committees:** A full fledged system of 24 departmentally related standing committees came into being in 2004. These committees cover under their jurisdiction all ministries/departments of the Government of India. These committees include committees on commerce, home affairs, industry and energy. Each of these standing committees consists of not more than 45 members-- 30 nominated by the Speaker from among members of the Lok Sabha and 15 nominated by the Chairman, Rajya Sabha, from among members of the Rajya Sabha. A minister is not eligible to be nominated to these committees. Each committee has a term of one year. With reference to the ministries/departments under their purview, the functions of these committees are: (a)

## Spardha Mithra coaching Centre

### Indian Polity and Governance

consideration of demands for grants, (b) examination of bills referred to by presiding officers of the two Houses.

In addition to the above, there are 32 **consultative Committees** attached to various ministries as per the 14th Lok Sabha. The members on these committees are drawn from both the houses. These committees discuss the problems and working of the government policies. There are also Parliamentary Subject Committees, 17 in number (in 1993) constituted to examine the grants of various ministries before presenting them to the Parliament for approval.

### **11.2 State Legislatures in India**

In every State in India, there is a provision for a legislature (Article 168) which consists of the Governor and a legislative assembly and legislative council in some states. In the states of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Uttar Pradesh and Jammu and Kashmir, there are two Houses (the Legislative Assembly and Legislative Council), and in all other states, there is the one House (the Legislative Assembly). Article 169 provides for the abolition or creation of a legislative council in a state by a Parliament resolution passed by a simple majority in each House on a representation by the concerned state to the President (Article 3). There is a proposal to have a legislative council in the State of Punjab.

Article 170 says that the maximum strength of a state legislative assembly can be 500 and the minimum 60. It is this house which is directly elected by the people whose tenure (Article 172) is five years, unless dissolved earlier; the tenure can be extended for a maximum period of one year during emergency. Qualifications, privileges, and disqualifications measures of members of the legislative assembly are by and large the same as those of the members of the Lok Sabha. Article 171 says that the maximum strength of a legislative council shall be one-third of the strength of the legislative assembly of the State, and the minimum 40. The Jammu and Kashmir Legislative Council has 36 members, while Andhra Pradesh,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Bihar, Karnataka, Maharashtra and Uttar Pradesh have 90, 75, 63, 78, and 108 members respectively. The legislative council is constituted as follows:

- (i) One-third of members are elected by the members of local bodies in the State (by municipalities, district boards, etc.)
- (ii) One-twelfth are elected by electorates of three years standing and residing within the State,
- (iii) One-twelfth are elected by teachers of three years standing in the State, not lower in standard than secondary school,
- (iv) One-third are elected by members of the legislative assembly of the State from among persons who are not members of the assembly; and
- (v) The remainder are nominated by the Governor from among persons who have a special knowledge or a practical experience of literature, science, art, cooperative movement and social service (Article 171).

Article 172 says that the legislative council is a permanent House and is not dissolved. Its members are elected for a period of six years. One-third retire every two years. The qualifications, privileges and the disqualifications measures of the members of the legislative council are, by and large, the same as are of the members of the Rajya Sabha.

The powers and functions of the state legislature extend to making laws on subjects enumerated in the State List and the Concurrent List. In case, there is a law passed on a subject of the Concurrent List by both the Parliament and the state legislature, the Union law prevails and the State law becomes void to the extent it goes contrary to the Union law. A bill has to be passed by the state legislature before it is presented to the Governor who either gives assent or withholds the bill or sends it back to the originating House or sends it to the President for his consideration. The bill can be sent to the President for his consideration for a second time (Article 201). The legislative assembly has more financial powers : a money bill is presented first in the assembly, the Council has a 14-day period to consider it. The executive powers of the assembly are more than those of the council:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the assembly can force the state Council of Ministers to resign by passing a vote of no-confidence. The legislative assembly also has special powers. as follows:

(i) A motion of no confidence against the government in the state can only be introduced in the legislative assembly. If it is passed by a majority vote, then the Chief Minister and his Council of Ministers must resign.

(ii) A money bill can only be introduced in Legislative Assembly or the Vidhan Sabha. After it is passed in the Vidhan Sabha, it is sent to the Vidhan Parishad (legislative council), where it can be kept for a maximum time of 14 days. Unless the Vidhan Parishad rejects it or 14 days lapse or suggestions made by the Vidhan Parishad are not accepted by the Vidhan Sabha, the bill is considered passed. The budget of the state is presented in the Vidhan Sabha by the finance minister of the State in the name of the Governor of that state.

(iii) If a bill is passed by the assembly for a second time and sent back to the council, and if the council does not pass it within one month or the assembly does not accept its recommendations for the second time, it is considered passed by both Houses. There is a mechanism of joint meeting of the two Houses to resolve the deadlock only on those bills originating in the assembly and the council not agreeing to them, but not for those bills, originating in the council, the assembly rejecting them.

The state legislature works through its committees in the same manner as the Parliament does. There are almost the same sort of officials in state legislature as in the Parliament. There is some kind of similarity between the powers of the Parliament and state legislature. When a deadlock between the two Houses of Parliament takes place owing to the Council of States rejecting the bill, or its proposed amendments are not acceptable to the House of the People or the latter does not pass the bill within six months, the bill is considered passed. In the case of state legislatures, the time period is three months. The provision for a joint sitting of the two Houses of Parliament does not relate to the fact as to where the bill

## Spardha Mithra coaching Centre

### Indian Polity and Governance

originated first, but in the case of state legislature. the provision for a joint sitting relates to the fact that the bill has originated in the assembly.

## **12. THE JUDICIARY IN INDIA**

The government's first great job is to control the people and thereafter itself. Unbridled government is a threat both to the individual as well as to the society. Controlling itself amounts to keeping its organs in balance with one another. Montesquieu's theory of separation of powers had a point: when the three organs are separately managed. they are, then, well-handled : give any of the two powers to one person or assembly of persons, the system not only slides into tyranny but also endangers the peoples' liberties. The separation of judiciary from legislature and the executive ensures justice on the one hand and the balance of power. on the other. A proper polity is one where the three organs of the state—legislature. executive and judiciary — function independently of each other and in so doing ensures the balance between them: legislature acts in such a manner that it keeps the executive in check; the executive functions in such a way that it keeps a balance with the legislature: judiciary operates in such a fashion that it keeps both the executive and the legislature in their mandated role.

Of the three organs, the role of judiciary is important. The test of a democratic polity depends, Bryce had once remarked. on the functioning of the judiciary. Speaking on the occasion of golden jubilee celebrations of the Supreme Court of India on January 28. 2000. the President of India said: "The judiciary in India has become the last refuge for the people and the future of the country will depend upon the fulfillment of the high expectations reposed by the people in it."

### **12.1 The Supreme Court of India**

#### **I 2.1 (i) Introduction**

Chapter IV of Part V (Articles 124 to 147) of the Constitution deals with the Union judiciary which largely relates to the Supreme Court of India. Article 124 of the Constitution says that there shall be a Supreme Court of India

## Spardha Mithra coaching Centre

### Indian Polity and Governance

consisting of the Chief Justice and other judges whose number is prescribed by the Parliament through law passed from time to time. In 1950. the Supreme Court of India consisted of a Chief Justice and seven judges. This number increased to 11 in 1956, 14 in 1960. 18 in 1978. 26 in 1986 and 31 in 2009. The Supreme Court. at present, consists of one Chief Justice and 30 judges. Each judge. including the Chief Justice, has a **tenure** until he attains the age of sixty-five years. He can resign or can be removed as per clause 4(a) of Article 124 which reads:

A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address, by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

Clause 3 of this Article prescribes **qualifications** for the appointment of a judge: (a) He shall be a citizen of India, (b) has been, for at least five years, a Judge of a High Court or of two or more such courts in succession: or (c) has been, for at least ten years. an advocate of a High Court or of two or more such courts in succession: or (d) is, in the opinion of the President. a distinguished jurist.

A judge who has served in the Supreme Court is barred to plead in any court within the territory of India after retirement. The judges of the Supreme Court are paid salaries and are entitled to such privileges as determined by Parliament by law passed from time to time (Article 125).

The Supreme Court came into being on January 28,1950; and its inauguration took place in the Chamber of Princes in the Parliament.

**Appointment of judges** has become an important issue over the years. indeed. the Chief Justice is appointed by the President after consultation with judges of the Supreme Court and High Courts as he deems necessary. Other judges are appointed by the President after consultation with the Chief Justice and other judges of the Supreme Court and High Courts as he

## Spardha Mithra coaching Centre

### Indian Polity and Governance

deems necessary. What has become an issue is the word "consultation" and its implications. The Supreme Court has, itself, given interpretation of the word "consultation". In the first Judges case (1982), "consultation" was understood as "exchange of views" and not "concurrence" [see S.P. Gupta v. Union of India, 1982; also Union of India v. Sankal Chand Seth (1977)] but in the second judges case (1993), the Supreme Court held that the word "consultation" means "concurrence" and that the advice given by the Chief Justice is binding on the President in matters relating to the appointment of judges of the Supreme Court, making it clear that the Chief Justice while giving advice to the President would consult two of his senior-most colleagues. In the third judges case (1998), the Supreme Court held the view that the consultation process adopted by the Chief Justice would require "consultation of plurality judges" i.e., the Chief Justice needs to consult a collegium of four senior-most judges of the Supreme Court, and if two of them give an adverse opinion, the Chief Justice need not send the recommendations to the government. However, the recommendations have to go to the President in writing. It may be remembered that the recommendations are consultative in nature, the power of the appointment of the judges is solely and exclusively vested in the President. All this has necessitated the establishment of a National Judicial Commission to help appoint judges of the Supreme Court.

The Judges Enquiry Act (1965) regulates the procedure relating to the removal of a judge of the Supreme Court and the procedure is:

1. A removal motion signed by 100 members of the Lok Sabha or 50 members of the Rajya Sabha is to be given to the Speaker/Chairman.
2. The Speaker/Chairman may admit the motion or refuse to admit it.
3. If it is admitted, then the Speaker/Chairman is to constitute a three-member committee to investigate into the charges.
4. The committee should consist of the Chief Justice or a judge of the Supreme Court, a Chief Justice of a High Court and a distinguished jurist.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

5. If the committee finds the judge guilty of misbehaviour or suffering from incapacity, the House can take up the consideration of the motion.

6. After the motion is passed by each House of the Parliament by special majority, an address is presented to the President for removal of the judge. Special majority means two-thirds of the members present and voting and which must have a simple majority of the total membership of each House.

7. Finally, the President passes an order removing the judge.

No Supreme Court judge has been impeached so far. The first and the only case of impeachment is that of Justice V. Ramaswami of the Supreme Court (1991-93). Though the enquiry committee found him guilty of misbehaviour, he could not be removed as the impeachment motion was defeated in the Lok Sabha. The Congress Party abstained from voting. The impeachment of Justice Soumitra Sen's proceedings have been dropped in Lok Sabha, following his resignation as a judge of Calcutta High Court on September 1, 2011.

#### **12.1(ii) jurisdiction of the Supreme Court**

The Supreme Court has original, appellate and advisory jurisdiction

**(i) Original jurisdiction:** The Supreme Court has an exclusive, original jurisdiction under article 131, over any dispute between the Government of India and one or more States or between the Government of India and any state or states on one side and one or more states on the other or between two or more states; if and in so far as the dispute involves question (whether of law or of fact) on which depends the existence of extent of a legal right. In addition, Article 32 of the Constitution grants an extensive original jurisdiction to the Supreme Court in regard to enforcement of the Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, to enforce them.

**(ii) Appellate jurisdiction:** The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by High Court under Articles 132(1),



## Spardha Mithra coaching Centre

### Indian Polity and Governance

133(1) or 134 of the Constitution in respect of a judgment, decree or final order, passed by it in civil or criminal cases, involving substantial question of law as to the interpretation of the Constitution. The Supreme Court can also grant special leave to appeal against judgment or order of a non-military court. The parliament has the power to enlarge the appellate jurisdiction of the Supreme Court and has exercised this power in case of criminal appeals by enacting the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

Appeal can also be filed to the Supreme Court in civil matters if the High Court concerned certifies that the case involves a substantial question of law of general importance, and that, in the opinion of the High Court, the said question needed to be decided by the Supreme Court. In criminal cases, an appeal can be filed to the Supreme Court if the High Court has:

(a) on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or

(b) withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or imprisonment for life or for a period of not less than 10 years, or

(c) certified that the case is fit for appeal to the Supreme Court.

The Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from judgment, final order or sentence in criminal proceedings of a High Court.

**(iii) Advisory Jurisdiction:** The Supreme Court has a special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution. However, the President is not bound to accept the advice. Some of the cases where the advice of the Supreme Court was sought included: Delhi Laws Act (1954), Kerala Education Bill (1958), Berubari Union (1960), Customs Act (1963),

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Special Courts Bill (1978), Jammu and Kashmir Resettlement Act (1982), Cauvery Water Dispute Tribunal (1992), Ram Janma Bhumi case (1994).

(iv) The Supreme Court has the power to grant special leave to appeal against any judgment by any court (Article 136).

(v) The Supreme Court is empowered to review its own judgment (Article 137).

Under Articles 129 and 142 of the Constitution, the Supreme Court has been vested with **power to punish anyone for contempt of any law court** in India. (See Delhi Judicial Services Association v. State of Gujarat - 1991) The Supreme Court performed an unprecedented action when it directed a sitting minister of the State of Maharashtra to be jailed for one month on a charge of contempt of court on May 12, 2006. This was the first time that a serving minister was ever jailed.

**Judicial Review** Judicial review is a process through which the judiciary examines the constitutionality of a legislative act and/or executive order. If on examination it is found that there has been a violation of the Constitution, the judiciary declares it to be unconstitutional and invalid. Though the word "Judicial review" has nowhere been used in the Constitution, numerous provisions (such as Articles 13, 32, 131, 132, 133, 134, 226, 246 etc.) explicitly confer the power of the judicial review on the Supreme Court. The Supreme Court has used the power of judicial review in various cases, such as the Golaknath case (1967), the Bank Nationalisation case (1970), the Privy Purses Abolition case (1971), the Kesavananda Bharati case (1973), and the Minerva Mills case (1980). When the judicial review power is exercised, the following three grounds are referred to by stating that the law or the order:

- (a) infringes the Fundamental Rights (Part III),
- (b) is outside the competence of the authority which has framed it, and
- (c) is repugnant to the constitutional provisions.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**Independence of Supreme Court Judges** The Constitution seeks to ensure the **independence of Supreme Court Judges** in various ways. Judges are generally appointed on the basis of seniority and not on political preferences. A judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity. The salary and allowances of a judge of the Supreme Court cannot be reduced after appointment. A person who has been a judge of the Supreme Court is barred, after retirement from practising in any court of law or before any authority in India.

**12. I (iii) The Supreme Court:**

**The Role of Judiciary**

The intention of the Constituent Assembly, in so far as the Supreme Court was concerned, was to make the apex court as the custodian of

- (a) the federal scheme which the framers had visualised;
- (b) the Constitution they had so fondly made, and
- (c) the Fundamental Rights granted to the people as en-shrined in the Constitution.

The framers had no intention to put one organ of the government against the other; the idea was to check the arbitrariness of both the legislature and the executive, rather than making it as the battleground for settling scores. They did wish to project it as impartial as possible and had sought to keep the judiciary away from the pressure of the government, legislature including. There was, in fact, no intention to make the judiciary override the wishes of the legislature, either. Happily, the provisions relating to the Supreme Court were so designed that it acted as the guardian of the constitutional and administrative system. The idea of impartial judiciary

## Spardha Mithra coaching Centre

### Indian Polity and Governance

was what the framers of the Constitution sought to establish in the country. Alladi Krishnaswamy Ayyar had rightly pointed out in the Constituent Assembly: "While there can be no two opinions on the need for the maintenance of judicial independence, both for the safeguarding of the individual liberty and the proper working of the Constitution, it is also necessary to keep in view one important principle. The doctrine of independence is not to be raised to the level of a dogma so to enable the judiciary to function as a kind of super-legislature or super-executive." The Supreme Court, over the years, has served its role remarkably well. Though Article 131 restricts the Supreme Court to take up issues relating to treaties prior to the commencement of the Constitution as also matters under Articles 280 and 290, it did decide disputes between the Union Government and the governments of states or between states. In the case, *State of West Bengal v. Union of India*, 1963, the

Supreme Court declared the unconstitutionality of the Coal Bearing Areas Act, 1957. In the *State of Bihar v. Union of India* case. 1970, the Supreme Court held that disputes of constitutional and legal and not of political nature be taken up. (see also *State of Rajasthan v. Union of India*, 1978), In yet another case, the *State of Karnataka v. Union of India*, (1978), the government of Karnataka challenged the power of the Union Government to appoint an enquiry commission under Article 131, though the Supreme Court had interpreted the said Article generously. Another two cases, *State of Karnataka v. State of Andhra Pradesh*, 2001 and the *State of Haryana v. State of Punjab*, 2002, related to the distribution of river waters between the concerned states and stated that these did not constitute part of the dispute arising under Article 131 (the two cases were related to Article 262 and were, hence, not taken up for hearing by the apex court.

Although the issue in the *S.R. Bommai v. Union of India* case, 1994, was not one of doubting India's federal scheme as was asserted. "The fact that the Supreme Court declared under the scheme of our Constitution, greater power is conferred upon the Centre vis-a-vis the States does not mean that the States are mere appendages of the Centre. The States have an

## Spardha Mithra coaching Centre

### Indian Polity and Governance

independent constitutional existence. They are not satellites or agents of the Centre. Within the sphere allotted to them, the States are supreme,... let it be said that the federation in the Indian Constitution is not a matter of administrative convenience, but one of principle the outcome of our own process and a recognition of ground realities".

The Supreme Court of India has protected the fundamental rights, rather overzealously. The right to life under Article 21 is not merely the right to live; it is the right to live with dignity, to live in a healthy environment: its scope extending to all civil human rights. Endorsing the view taken in the *Motiram v. State of Madhya Pradesh* case, 1978, the Supreme Court, in the *Hussainara Khaton* case, 1979, sought to include "reasonable, fair and just" conditions when acting on "the procedure established by law under Article 21. Condemning the practice of using handcuffs and fetters as torture of the prisoners, defiling their dignity, vulgarising the society, and fouling the soul of the country's culture, the Supreme Court, in the *Prem Shankar Shukla v. Delhi Administration* case; 1980 invoked Articles 14, 19 and 21 declaring the handcuffing as the violation of one's personhood, a decision which was reiterated in the *Citizens for Democracy v. State of Assam* case 1995. In *Keshu Devi Choraria v. Union of India*, 1980, the Supreme Court declared personal liberty (Article 21) as most precious without which life would be worth nothing. In yet another case, *Nilabati Behera v. State of Orissa*, (1993), the Supreme Court declared judiciary as the "protector of civil liberties". In *Delhi Domestic Working Women's Forum v. Union of India*, 1995, the Supreme Court asserted that "speedy trial is one of the essential requisites of law" giving a meaning to the guarantee of "equal protection of law" under Article 14. The *People's Union for Civil Liberties v. Union of India*, 1997, *D.K. Basu v. State of West Bengal*, 1997, and *Vishaka v. State of Rajasthan*. 1997 cases, the Supreme Court sought to prohibit arbitrary interference and custodial torture as a naked violation of human dignity, and sexual harassment as against the civil rights of the people (Articles 14, 15, 19).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Supreme Court has done no less in expressing its concern about the impact of pollution on ecology and environment in numerous cases. Some of these cases are M.C. Mehra v. Union of India, 1988, Indian Council for Enviro-Legal Action v. Union of India, 1996, Vettore Citizen's Welfare Forum v. Union of India, 1996, S. Jagannath v. Union of India, 1997, M.C. Mehta (Taj Trapezium Matter) v. Union of India, 1997, M.C. Mehta (Badkhal and Surajkund Lakes Matter) v. Union of India, 1997, Bittu Sehgal v. Union of India, 2001, and M.C. Mehta v. Union of India, 2002.

In the field of education and especially relating to the rights of the minority, the Supreme Court has given historic decisions, contributing immensely to these fields. Some such cases are Kerala Education Bill, 1957 (1959). The Ahmedabad St. Xavier Society v. State of Gujarat, 1974, St. Stephen's College v. University of Delhi, 1992, Mohini Jain v. State of Karnataka, 1992, Unni Krishnan v. State of Andhra Pradesh, 1993, T. MA, Pai Foundation v. State of Karnataka, 2002, Islamic Academy of Education v. State of Karnataka, 2003, and P.A. Inamdar v. State of Maharashtra, 2005.

The judicial review power of the Supreme Court together with that of High Courts has enhanced the position of the Indian judiciary. The Supreme Court of India, being the highest judicial organ, is an important institution in our polity. Over the years, it has proved its merit by being the custodian of the Constitution, protector of our federal system and the defender of the fundamental rights of our people.

Indeed, the Supreme Court has been able to attain and keep its grandeur; although it is not as powerful as the American Supreme Court. The American Supreme Court has empowered itself through what is called "due process of law" which has given it wide scope of power, including the power to protect the rights of the people and the Constitution. The Indian Supreme Court works within what has been described as "procedure established by law; which has relatively restricted its scope of power." The American Supreme Court goes by the law as well as by its spirit, while the Indian Supreme Court goes more by the law than by its spirit.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**12.2 The High Courts in India**

Chapter V of Part VI, from Articles 214 to 231. deals with High Courts in the States. Article 214 says that there shall be a High Court for each State, though some states may have a common High Court together (Guwahati High Court. for example. has its jurisdiction over the States of Arunachal Pradesh, Assam, Manipur. Meghalaya, Nagaland, Tripura. Mizoram; and Punjab and Haryana High Court has its jurisdiction over the States of Punjab and Haryana). Among the Union Territories, Delhi has a High Court, but other Union Territories are attached to their neighbouring States. Like the Supreme Court of India. each High Court is a court of record (Article 215) and as such has the power to punish for contempt of the court. Each High Court, Article 216 says. consists of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint. Article 217 prescribes the appointment, tenure and qualifications of judges. It reads, thus:

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India. and the Governor of the State. In the case of appointment of a judge other than the Chief Justice. the Chief Justice of the High Court shall be consulted. The judges shall hold office, in the case of an additional or acting judge, as provided in Article 224; and in any other case, until he attains the age of sixty-two years: Provided that:

(a) a judge may, by an application written in his hand addressed to the President, resign from his office.

(b) a judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a judge of the Supreme Court.

(c) the office of a high court judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or by his being transferred by the President to any other High Court within the territory of India.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India: and

- (a) has for at least ten years held a judicial office in the territory of India; or
- (b) has, for at least ten years, been an advocate of a High Court or two or more such courts in succession.

The Calcutta High Court is the oldest High Court in the country, established on July 2, 1862. The High Courts which handle a large number of cases of a particular region, have permanent benches (or a branch of the court) established there. Benches exist also in states which come under the jurisdiction of a court outside its territorial limits. Smaller states with few cases may have circuit benches. Circuit benches (known as circuit courts in some parts of the world) are temporary courts which hold proceedings for a few months in a year. Thus, cases built up during the interim period are judged when the circuit court is in session.

The judges of High Courts are paid salaries and are entitled to privileges as are determined by a Parliament through law. The jurisdiction of the High Court can be summed up as follows:

**(i) Original:** The High Court hears all disputes

(a) relating to matters of admiralty, will, marriage, company laws, contempt of court:

(b) relating to the elections of Parliament and state legislatures:

(c) relating to revenue matters;

(d) relating to enforcement of the fundamental rights.

**(ii) Writ :** The High Court has the power to issue writs such as habeas corpus, mandamus, prohibition, quo warrant, certiorari (Article 226).



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(iii) Appellate : Civil appeals against orders and judgments of district courts, additional courts; criminal appeals against sentences of more than seven years: death sentences awarded by lower court have to be confirmed by the High Court. where the lower court itself certifies that the appeal against its judgment can be made.

(iv) Control over Subordinate Courts: The High Court has the power to superintend over all courts and tribunals with regard to the compliance of rules and procedures, and service conditions

(v) Judicial Review : The High Court has the power to examine the constitutionality of a law or an executive order and declare the same void if it is against the Constitution. The 42nd Amendment (1976) restricted this power to state laws within its preview, but the 43rd Amendment (1977) restored the jurisdiction of the High Court to include State and Union laws and orders as well. •

### **12.3 judicial Review**

Judicial review is the power of the judiciary to declare the laws of the legislature and the orders of the executive unconstitutional if the judiciary finds such laws/orders contrary to the Constitution. Judiciary has this power because it, as compared to the other two organs of the state—the legislature and the executive—is usually and relatively impartial and non-political. It also has this power because it, as compared to the other two organs, is more capable to see through what is being overdone by some organs that is not due to them. Who else should be given the power to judge it except the one whose intentions are never in doubt? A legislature, because of its electoral compulsions, can usurp the power it does not have; an executive because of the power it can possibly assert, can go beyond its specified limits, but the judiciary, attuned to administer justice and committed to the statute book, would only seek to keep the balance in the system. That is one reason why the judiciary is empowered to uphold the Constitution and keep all laws/orders passed or issued within the parameters of the supreme law of the land, for, no judiciary is politically

## Spardha Mithra coaching Centre

### Indian Polity and Governance

ideologised, at least not at its highest level. The power of judicial review, vested in judiciary, is based simply on the logic that the Constitution should remain the supreme law of the land and that all the other laws and authorities need not venture to go beyond the limitations laid down by the Constitution.

The concept of judicial review is the American contribution to the world when Chief Justice Marshall, while pronouncing the verdict in *Marbury v. Madison* (1803), declared that it was judiciary, among the organs of the state, which can decide on the constitutionality of a law or a decree, and if found violating the Constitution, can declare it void. The judicial review in India differs from the way it exists in the USA. In the USA, the notion of judicial review is rooted in the doctrine of 'due process of law, while in India it is derived from a relatively lenient doctrine— "procedure established by law." In the *State of Madras v. V.C. Row* (1952) case, Justice Patanjali Shastri stated: "Our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution... This is especially true as regards the Fundamental Rights, to which this court has been assigned the role of sentinel. While the court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute."

There are specific provisions in our Constitution which provide for judicial review, especially the provisions relating to Articles 13, 32, 131, 136, 226, 245 and 246. But the Supreme Court had specified certain rules for applying the doctrine of judicial review. H.C. Seervai (*Constitutional Law of India*) refers to such rules:

(1) There is a presumption in favour of constitutionality and a law will not be declared unconstitutional unless the case is free of all doubts, and the onus to prove that it is unconstitutional lies with the petitioner who has challenged it.

(2) When the validity of a law is questioned, it should go to protect and promote parliamentary sovereignty.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (3) The court will not consider constitutional questions if a case can be decided on other grounds.
- (4) The court will not decide a larger constitutional question if it is required by the case before it.
- (5) The court will not hear an objection as to the constitution-ality of a law by a person whose rights are not affected by it.
- (6) A statute cannot be declared unconstitutional merely because it is not consistent with the spirit of the Constitution.
- (7) In assessing the constitutionality of a statute, the court is not concerned with the motives, bonafides or malafides of the legislature, but the law must be upheld whatever a court may think of it.
- (8) Courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force; because till then the question of validity would be merely academic.

Numerous laws and amendments have gone through judicial scrutiny from the time of the Constitution's enactment, though Nehru had emphatically stated : "No Supreme Court and no judiciary can stand in judgment over the sovereign will of the Parliament, representing the will of the entire community." The Kameshwar Singh v. State of Bihar (1951), Romesh Thapu v. State of Madras (1950) and Motilal v. State of Uttar Pradesh (1950) were the cases where the Supreme Court, using the power of judicial review, had declared the abolition of zamindari through amendment. The amendment act was challenged in Shankari Prasad case (1951) and the Sajjan Singh case (1965) (in the latter case the 17th Amendment act was challenged). In both cases, the Supreme Court held the view that the Parliament was empowered to amend the Constitution, including provisions relating to the Fundamental Rights. But in the Golaknath case (1967), which challenged the 17th Amendment on the ground that it had violated the Right to Property (Article 31 A especially); the Supreme Court reviewed its decision and declared that the Parliament can not amend the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Constitution which is violative of Article 13(2). The court's activism was witnessed in the 1969 Bank Nationalisation case and in the 1970 Abolition of Privy Purses ordinances when both ordinances, using the power of judicial review, were declared unconstitutional. The 24th, 25th and 26th amendments (all in 1971) defended the government's action. The apex court waited till 1973 when through the Kesavananda Bharati case it upheld the Parliament's power to amend the Constitution but did not allow- the basic structure of the Constitution to be destroyed by the Parliament. The 42nd Amendment (1976) enhanced the power of the Parliament immensely but in the Minerva Mills case (1980), the Supreme Court endorsed the decision made in the Kesavananda Bharati case, with Justice Bhagwati making a point: "It is for the judiciary to uphold constitutional values and to enforce constitutional limitations."

#### **12.4 Judicial Activism**

There is no statutory definition, nor is there any consensual connotation, given to the notion of "judicial activism." Judicial activism is usually described as a pro-active role played by the judiciary. Justice J.S. Verma says that judicial activism means "the active process of implementation of the rule of law, essential for the preservation of a functional democracy." Being an astrictive term, it is described differently by different persons. While some extol it as "judicial creativity and dynamism of judges" which brings revolution in the field of human rights and social welfare through enforcement of public duties, others criticise it by describing it as "judicial extremism, judicial terrorism, transgression into the domains of the other organs of the state negating the constitutional spirit". The two extreme views appear to have originated due to the role judiciary has played in different cases. Any amount of additional active role may lead to either judicial creativity or judicial extremism.

Governance is not merely a law-making process; it is also law-execution, together with the establishment of justice. The three organs of the state perform three different functions. It is always impossible to put these three different departments separately and then expect a normal functioning.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

That is why the legislature, while doing its major job of making legislation, performs certain administrative and judicial functions. So do other organs. Fusion, and not separation of functions is the key to good governance. And if in such a situation, the judiciary does perform relatively a more active role, judicial activism may not be given any more importance than what it deserves.

What is important is that judiciary in its role should not abuse either its powers or its position.

Governance, being something of a whole, has not to leave any ambiguity anywhere. What wrong is done when the judiciary fills up a vacuum? What wrong is done when any organ, other than the judiciary, is supported by the judiciary? Judicial activism operates in a situation of some 'vacuum', when it is required. Judiciary does not begin making laws on its own, nor does it carry out the administration. Justice Verma rightly says: "Judicial activism is that which ensures proper functioning of all organs and the best kind of judicial activism is that which brings about results with the least judicial intervention. If everyone else is working, we do not have to step in." Judicial activism is the judiciary acting, i.e., judiciary-in-action and not judiciary-in-intervention. Judicial activism is not one where judiciary takes up an activity but it is one where it is asked to take action on someone's else stance, public interest litigation including. In *S.P. Gupta v. Union of India* (1982) case the Supreme Court granted accessibility to persons to invite judicial action against the abuse of power or misuse or inaction of the government — both the legislature and the executive. It may be said that the Supreme Court had come to the rescue of workers (*People's Union for Democratic Rights v. Union of India*, 1982), bonded labour (*Bandhua Mukti Morcha v. Union of India*, 1984), prisoners (*Sunil Batra v. Delhi Administration*, 1978), pavement dwellers (*Olga Tellis v. Bombay Municipal Corporation*, 1985), under-trial detentes (*Hussainara IChatoon v. State of Bihar*, 1979), inmates of protection homes (*Upendra Baxi v. State of Uttar Pradesh*, 1983), and victims of Bhopal Gas Disaster (*Union Carbide Corporation v. Union of India*, 1991). In *Ratlam Municipality v. Viridichand*

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(1980), the Supreme Court sought to activate administrative machinery when it failed to perform its legal obligations. In *Common Cause v. Union of India*, (1996), the Supreme Court cancelled the allotment of petrol pumps made on grounds of nepotism and malafide and passed severe strictures against the then minister of Petroleum and Natural Gas. All these cases indicate that judicial activism has its own importance. A word of caution with regard to judicial activism comes from Dr. A.S. Anand, former Chief Justice of India, he says: "Courts have to function within the established parameters and, constitutional bounds. Decisions should have a jurisprudential base with clearly discernible principles. Courts have to be careful to see that they do not overstep their limits, because to them is assigned the sacred duty of guarding the Constitution. "Courts cannot create rights" where none exists nor can they go on making orders which are incapable of enforcement or violative of other laws or settled legal principles. With a view to seeing that judicial activism does not become "judicial adventurism", the courts must act with caution and proper restraint. They must remember that judicial activism is not an unguided missile; the failure to bear this in mind would lead to chaos. Public adulation must not sway judges and personal aggrandisement must be eschewed. It is imperative to preserve the sanctity and credibility of the judicial process. It needs to be remembered that courts cannot run the government. The judiciary should act only as an alarm bell; it should ensure that the executive has become alive to perform its duties."

### **12.5 Subordinate Courts**

The structure and functions of subordinate courts are more or less uniform throughout the country. Their designations denote their functions. They deal with all disputes of civil or criminal nature as per the powers conferred on them. Their power is derived principally from two important codes prescribing procedures, the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1973, and further strengthened by local statutes. As per the direction of the Supreme Court (*WP (Civil), 1022/1989* in the *All India Judges Association case*) a uniform designation has been given to the.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

subordinate judiciary's judicial officers all over the country, viz., District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior Division) on the civil side and on criminal side, Session Judge, Additional Sessions Judge, Chief Judicial Magistrate and Judicial Magistrate, etc., as laid down in the Cr.PC. Under Article 235 of the Constitution of India, administrative control over members of the subordinate judicial service rests with the concerned High Court. Further, in exercise of powers conferred under proviso to Article 309 read with Articles 233 and 234 of the Constitution, state government frames rules and regulations in consultation with the High Court in their state to administer subordinate courts. Members of the state judicial services are governed by these rules and regulations.

The next set of courts is described as courts of district and sessions judge which also include courts of additional judge, joint judge or assistant judge. The court of the district and sessions judge at district level is the principal court of original jurisdiction.

In addition, there are courts known as small causes courts. These are set up either under the Provisional Small Causes Act at the district level or under the Presidency Town Small Causes Courts Act in presidency/metropolitan towns.

The **Nyaya Panchayats** provide speedy and inexpensive justice to the villagers.

The Family Courts Act, 1984, aims at promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs and related matters. It envisages that courts shall be set up in a city or town with a population of more than 10 lakh and at such other places as the State government may deem necessary. Family courts have been set up in Andhra Pradesh (seven), Assam (one), Bihar (two), Karnataka (five), Kerala (five), Maharashtra (sixteen), Manipur (one), Orissa (two), Pondicherry (one), Punjab (two), Rajasthan (five), Sikkim (one), Tamil Nadu (six), Uttar Pradesh (sixteen) and West Bengal (one). Besides, necessary notifications extending

## Spardha Mithra coaching Centre

### Indian Polity and Governance

the jurisdiction of the Family Courts Act have been issued by the Government of India in respect of Haryana, Madhya Pradesh and the Union Territory of Andaman and Nicobar Islands.

#### **12.6 Administrative Tribunals**

The provisions regarding Administrative Tribunals did not form part of the original Constitution and were incorporated in the Constitutions through the addition of two articles—Articles 323A and 323B—by the 42nd amendment in 1976. Article 323A provided for the establishment of Administrative Tribunals by a Parliament law for the adjudication or trial of disputes and complaints relating to the recruitment and conditions of service of government servants under the Central Government and the State government, including the employees of any local or other authority within the territory of India. In pursuance of this provision, the Parliament enacted the **Administrative Tribunals Act 1985** under which the Central Administrative Tribunal was set up in November 1985. This tribunal seeks to provide speedy and inexpensive justice to Central Government employees with respect to their service matters. In addition to the Central Administrative Tribunal, the Central Government can also establish and administrative tribunals for one or more States on the request of the State government. The Central Administrative Tribunal is located at Delhi and has benches located in various States.

**Composition** As regards the composition of the Tribunals, each Tribunal consists of a chairman and such number of vice chairmen and judicial and administrative members as may be deemed fit by the government. The additional benches, on the other hand, consist of one judicial member and one administrative member. The chairman of the Central Administrative Tribunal can also constitute a single-member bench for certain types of cases.

A person, to be eligible for appointment as chairman of the administrative tribunal, should either be a sitting or ex judge of a High Court; or should have held the office of vice-chairman for two years; or should have held the



## Spardha Mithra coaching Centre

### Indian Polity and Governance

post of a Secretary to the Government of India for two years; or should be holding any other post carrying the scale of pay of a Secretary for two years.

To be eligible for appointment as vice-chairman, a person should either be sitting or retired judge of a High Court; should have held the post of Secretary to the Government of India for two years; or should be holding some other post carrying the same pay scale under the Central or State government; or should have held the post of an Additional Secretary to the government of India or any other post carrying the pay scale of an Additional Secretary for five years.

To be eligible for appointment as judicial member, a person should be or should have been a judge of a High Court; or should have been a member of the Indian Legal Service and held a post in Grade I of the Service for at least three years. The qualifications for appointment as administrative member include holding of the post of Additional Secretary to the Government of India or some other equivalent post for at least two years; or holding the post of Joint Secretary to the Government of India or other equivalent post; and possession of adequate administrative experience.

The chairman, vice-chairman and other members of the Administrative Tribunal are appointed by the President. While appointing judicial members, the President consults the Chief Justice of India. The chairman, vice chairman and other members hold office for a term of five years or till they attain the age of retirement. The retirement age for the chairman and vice-chairman has been fixed as 65 years, while for other members the retirement age is 62 years. The chairman, vice-chairman and other members can relinquish their office earlier by addressing their resignation to the President.

The jurisdiction of the Central Tribunal extends to all the powers and authority enjoyed by the High Courts before the establishment of the tribunal with regard to (a) recruitment to any All India Service or Civil Services of the Union, or a civil post under the Union or civilian employees of the defence services; (b) all service matters of the above mentioned

## Spardha Mithra coaching Centre

### Indian Polity and Governance

employees; and (c) all service matters in respect of persons whose services have been placed at the disposal of the Central Government by the state government or local authorities.

**Tribunals for other Matters** Under Article 323-B, the Parliament and the State legislatures have been empowered to establish tribunals for the adjudication of any disputes, complaints or offences in respect of (a) levy, assessment collection and enforcement of any tax; (b) foreign exchange and export; (c) industrial and labour disputes; (d) land reform laws enacted under Article 31A of the Constitution; (e) ceiling on urban property; (f) election disputes of members of Parliament or State legislatures (except matters referred to in Articles 329 and 329-A—which have taken away the jurisdiction of the court to decide election disputes of the Prime Minister and Speaker of the Lok Sabha); (g) production, procurement, supply and distribution of foodstuffs and essential goods and control of prices of such goods; (h) rent, its regulation and control and tenancy issues, including the rights, titles and interests of the landlords and tenants, (i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters; (j) matters incidental to any of the matters specified in the above subclauses.

### 12.7 Lok Adalat

Lok Adalat (People's Courts), established by the government, settles disputes through conciliation and compromise. The first Lok Adalat was held in Chennai in 1986. Lok Adalats accept cases which could be settled by conciliation and compromise, pending in regular courts within their jurisdiction.

The Lok Adalat is presided over by a sitting or retired judicial officer as chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in a regular court, the fee paid is refunded if the dispute is settled at the Lok Adalat. Procedural laws and the Evidence Act are not strictly followed by the Lok Adalats while assessing the merits of claims. Main condition of the Lok Adalat is that

## Spardha Mithra coaching Centre

### Indian Polity and Governance

both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through the legal process. No appeal lies against the order of the Lok Adalat.

Lok Adalat is very effective in settlement of money claims. Disputes, like partition suits, damages and matrimonial cases, can also be easily settled in Lok Adalats. as chances of compromise through give and take approach stand high in such cases.

Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

Lok Adalats have proved to be an effective mechanism for resolution of disputes through conciliatory methods. About 7.25 lakh Lok Adalats have been held throughout the country till March 2009 in which more than 2.68 crore cases have been settled. In about 16.87 lakh motor accident claim cases ,more than Rs. 7593 crore has been awarded as compensation.

Lok Adalats have been given the status of a Civil Court and every award made by the Lok Adalat is final and binding on all parties and no appeal lies to any court against its award. Benefits which accrue to litigants through Lok Adalats are:

(i) There is no court fee and if the case is already filed in a regular court, the fee paid is refunded if the dispute is settled in the Lok Adalat.

(ii) There is no strict application of procedural laws and the Evidence Act while assessing the merits of the claim by the Lok Adalat. Parties, to the dispute though represented by their advocates can interact with the Lok Adalat judge directly and explain their stand in the dispute. and the reasons thereof. This is not possible in a regular court of law.

(iii) Disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(iv) The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through the legal process. No appeal lies against the order of the Lok Adalat whereas verdicts of regular law courts can be challenged in higher forums—a process which causes delay in the settlement of the dispute. Rationale behind the Lok Adalat decisions is that they are based on mutual settlements and, hence, no case for appeal shall arise. In every respect, the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

### **12.8 Free Legal Aid and Public Interest Litigation**

Article 39A of the Constitution provides for free legal aid to the poor and weaker sections of the society. The Legal Services Authorities Act, 1987. (as amended by the Act of 1994) which came into force on November 9, 1995, aims at establishing a nation-wide network for providing free and comprehensive legal services to the weaker sections. A National Legal Services Authority (NALSA) has been set up for implementing and monitoring legal aid programmes in the country and a Supreme Court Legal Services Committee constituted under the Act. In High Courts also, High Court Legal Services Committees are being established to provide free legal aid to eligible persons in matters coming before the High Courts. The Legal Services Authorities Act also provides for constitution of state legal services committees, high court legal services committees, district legal services committees and taluk legal services committees. Under the Legal Services Authorities Act, every citizen whose annual income does not exceed Rs.9,000 is eligible for free legal aid in cases before subordinate courts and High Courts. In cases before the Supreme Court, the limit is Rs.12,000. This limit can be increased by state governments. Limitation as to the income does not apply in the case of persons belonging to the Scheduled Castes, Scheduled Tribes, women, children and, handicapped. Legal aid programmes adopted by NALSA include promoting legal literacy, setting up of legal aid clinics in universities and law colleges, training of para-legal personnel and holding legal aid camps and Lok Adalats.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The government had sanctioned Rs.4 crore as grants-in-aid for NALSA in 1998-99 to implement its programmes at various levels. The NALSA also monitors and evaluates the implementation of the legal aid programmes in the country. Till March, 2009, about 96.99 lakh people have benefitted through legal aid and advice throughout the country in which about 13.83 lakh persons belonged to the Scheduled Castes, and 4.64 lakh persons belonged to Scheduled Tribes; and about 10.22 lakhs were women.

In 1981, Justice P.N. Bhagwati in *S.P. Gupta v. Union of India*, 1981; articulated the concept of **Public Interest Litigation (PIL) as follows:**

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."

The rule of focus standi has been relaxed and a person acting bonafide and having sufficient interest in the proceeding of Public Interest Litigation will have a locus standi and can approach the court to challenge the violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gains or private profit or political motive or any oblique consideration (*Ashok Kumar Pandey v. State of West Bengal*, 2004). In *Guruvayur Devaswom Managing Committee v. C.K. Rajan* (2003), the apex court held, "The Courts exercising their power of judicial review found to their dismay that the poorest of the poor, the deprived, the illiterate, the urban and rural unorganised labour, women, children, handicapped by 'ignorance, indigence' and illiteracy' and other downtrodden have either no access to justice or had been denied justice. A new branch of proceedings known as "Social Interest Litigation" or 'Public Interest Litigation' was evolved with a view to rendering complete justice to the aforementioned

## Spardha Mithra coaching Centre

### Indian Polity and Governance

classes of persons. It expanded its wings in course of time. The courts in pro bona publico granted relief to inmates of the prisons, provided legal aid, directed speedy trial, maintained human dignity and covered several other areas. Representative actions, pro bona publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass real issues on the merits by reliance on peripheral procedural shortcomings. Pro bona publico constituted a significant page in the present day judicial system.

**Public Interest Litigation**, in Indian law, means litigation for the protection of public interest. It is a litigation introduced in a court of law, not by the aggrieved party but by the court itself or by a private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her rights should personally approach the court. Such cases may occur when the victim does not have the necessary resources to commence litigation or his freedom to move court has been suppressed or encroached upon. The court can itself take cognizance of the matter and proceed suo motu or cases can commence on the petition of any public-spirited individual. Numerous aspects of Public Interest Litigation (PIL) may be stated as:

- (1) The nature of Public Interest Litigation is remedial, as that the traditional locus standi rules are not followed in such cases.
- (2) A third party, not concerned with the case, can file a petition on the ground that the injured party cannot approach the court.
- (3) PIL makes the court change its position—from protector to the guardian of the rule of law.
- (4) PIL makes the case one of collaborative nature where all concerned—the claimant, the court, the government—seek human rights as meaningfully as possible.
- (5) PIL makes the litigation investigative as it works on reports of registrar, district magistrate. and comments of experts, and the like.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(6) An attempt is made to wipe tears from some eyes in PIL cases when PIL cells are opened to help the needy. This is called the epistolary jurisdiction.

PIL is working as an important instrument of social change. It is working for the welfare of every section of the society. It is a sword that can be used by everyone for securing justice. The innovation of this legitimate instrument citizen has proved beneficial in a developing country, like India. PIL has been used as a strategy to combat atrocities in the society. It is an institutional initiative for the welfare of the needy in the society. In *Bandhu Mukti Morcha v. Union of India*, the Supreme Court ordered the release of bonded labourers. In *Murli S. Dogra v. Union of India*, the court banned smoking in public places. In a landmark judgment of *Delhi Domestic Working Women's Forum v. Union of India*, (1995), the Supreme Court issued guidelines for rehabilitation and compensation for raped working women. In *Vishaka v. State of Rajasthan*, the Supreme Court laid down exhaustive guidelines for preventing sexual harassment of working women in their places of work. We may, thus, conclude by quoting Cunningham, "Indian PIL might rather be a Phoenix, a whole new creature arising out of the ashes of the old order". It is, indeed, something like the American PIL (Public Interest Law), or rather better in the sense that it does not touch the spirit of social change. PIL in India is related to environmental cases as well (MC. Mehta cases are such examples).

#### **12.10 Judicial Reforms**

There are, at present, over 14,000 courts throughout the country handling about four crores of cases, with the working strength of about 12,500 judges. Each judge handles nearly 4,000 cases. Is it not a sufficient ground for initiating judicial reforms in the country?

Working on the judicial management system, our National Judicial Academy is doing its job seriously. Though there are a large number of cases before courts, the fact is that only about 40 per cent of the cases are one-year old, while 90 per cent of the delayed cases are those pending in subordinate courts.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

An array of long-term and short-term reforms may be suggested. With regard to the long-term reforms, we need to have : (i) legislative reforms to remove the bottlenecks which adversely affect the adjudication, (ii) to strengthen the bar, (iii) to strengthen legal education, (iv) legislative reforms to expand the power of judges to control judicial pressures to ensure just and efficient outcomes in line with international reforms, and (v) a satisfactory framework for judicial accountability.

With regard to short-term reforms, it is suggested: (i) If certain administrative reforms are made, a large number of cases pending in courts can be reduced. In most cases, the government is a party in the case (either defendant or appellant). If the decision-making authorities take firm, independent and impartial steps in time, citizens would not be driven to litigations. (ii) A weak and inefficient revenue administration is another reason for a large number of civil cases. If the revenue administration is streamlined and every one is given proper title deeds with computerised diagrams. a large number of land disputes could be avoided. In States where the revenue administration is poor, there are large numbers of civil cases and these disputes relate either to title or boundaries of their properties. These cases could be avoided, if proper re-survey operations are done and proper revenue records are maintained by the authorities. (iii) There are a large number of financial institutions which are trying to recover money through criminal proceedings by making use of the provisions of the Negotiable Instruments Act. The courts have become collecting agents for these financial institutions. Most of them are privately owned by people who engage in the practice of giving loans. Because of these types of cases, the trial of ordinary criminal cases is seriously hampered. Why does not the government build its own infrastructure and in the process reduce the number of cases in the courts? (iv) A large number of motor accident claims are pending in various tribunals. In some States, it takes more than four-five years to settle a claim despite the fact that the large number of cases are settled through Lok Adalats. The Insurance Companies should have proper settlement method whereby they must acknowledge their liability and disburse the amount to the claimant



## Spardha Mithra coaching Centre

### Indian Polity and Governance

even before he/she comes to the courts. Such a streamlined procedure is not available in our system. When the claimants are before the courts, insurance companies are not in a position to settle the claims even in cases where they admit their liability. (v) The situation is not different in respect of land acquisition cases. In many cases amount awarded by land acquisition officers are not reasonable or proper, driving parties to resort to litigation. If there were district-level high power committees to fix compensations at reasonable amount, most claimants might possibly accept them leaving only a few to move to courts for enhancement. (vi) Most criminal cases get delayed intentionally. Inept policing and weak prosecution are largely responsible for the slow-pace of trials in many courts. There is always a planned approach to delay the criminal cases.

In conclusion, we may say that there is a need for National Minimum Court Performance Standards in the country so that disposal of the cases is increased, courts do not delay the adjudication unnecessarily, and cases should have their serial numbers together with the starting dates.

### **13. UNION TERRITORIES**

#### **13.1 Introduction**

Union territories refer to areas directly administered by the Central Government. Their administration is the responsibility of the President, who administers them through administrators. At present, there are seven union territories—Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Delhi (National Capital Territory), Daman and Diu, Lakshadweep, and Puducherry. These areas have been placed under the direct control of the Central Government for different reasons such as cultural distinctiveness, strategic importance or due to political and administrative considerations.

#### **13.2 Administration**

There is no uniform system of administration in the union territories. Parliament has been vested with the power to prescribe the structure of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

administration in the various union territories. The administrators of union territories are variously known as lieutenant governors, chief commissioners or administrators. In Daman and Diu, and Puducherry, they are designated as lieutenant governors. In Andaman and Nicobar Islands and Chandigarh they are known as chief commissioners and in Lakshadweep as administrator.

Similarly, some union territories possess legislative assemblies and councils of ministers such as Daman and Diu, Puducherry, and Delhi (National Capital Territory), while others do not. Before the creation of legislative assembly in Delhi, it had a metropolitan council and an executive council. The 68th Amendment, carried out in 1992, provided a special status to the Union Territory of Delhi. It redesignated the Union Territory of Delhi as the National Capital Territory of Delhi and stipulated that the administrator shall be designated as the lieutenant governor. The amendment act created a legislative assembly for the National Capital Territory of Delhi and granted it power to make laws for the whole or part of the National Capital Territory with respect to all matters enumerated in the State list or Concurrent list, except with respect to entries 1,2 and 18 of the list. It also provided a council of ministers consisting of not more than seven members, with the chief minister as its head to aid and advise the lieutenant governor in the exercise of his functions.

It may be noted that in Union Territories with legislative assemblies, the right to legislate on subjects enumerated in the state list and concurrent list vests with the assembly. With respect to other Union Territories, the laws are enacted by the Parliament, the administrators of the Union Territories enjoy the right to issue ordinance within certain limitations. When the legislatures of the Union Territories are dissolved or suspended, responsibility for the peace, progress and good government of the territory falls on the President.

### **13.3 Scheduled Areas**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Constitution has made special provisions for the administration of Scheduled Areas in a State other than Assam, Meghalaya, Tripura and Mizoram. The right to declare any area as a Scheduled Area rests with the President and is subject to legislation by the Parliament. The Constitution contains special provisions regarding the administration of Scheduled Areas. which are contained in the Fifth Schedule. The Union Government can also give directions to the respective States regarding administration of the Scheduled Areas. The Governor of the State, where such areas are located, has to submit reports to the President regarding the administration of such areas annually or whenever required by the President. To take care of the welfare and advancement of the Scheduled Tribes in the State, a Tribes Advisory Council is constituted. In addition, the Governor can also take certain steps to protect the interests of the Scheduled Tribes. Thus, he can direct that a particular Act of Parliament or state legislature shall not apply to the Scheduled Areas. He can make regulations prohibiting or restricting transfer of land, allotment of land and money lending. However, all these actions of the Governor need prior approval of the President.

#### **13.4 The Tribal Areas**

These are located in the states of Assam, Meghalaya, Mizoram and Tripura and are specified in the Sixth Schedule of the Constitution. Though these areas fall within the executive authority of the State, provision has been made for the creation of district councils and regional councils for the exercise of certain legislative and judicial powers in these areas. The district and regional councils are empowered to make laws in certain fields such as management of forests, marriage and social customs, inheritance of property, etc. These councils can also impose certain taxes and collect land revenue. The Governor can also authorise these councils to try certain suits and offences.

### **14. FEDERALISM IN INDIA: UNION-STATES RELATIONS**

#### **14.1 Federalism in India**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

On the basis of relations between the Central Government and the federating units, the governments are classified as unitary and federal. In a unitary system of government, all powers are concentrated in the Centre, which can delegate them to the units. On the other hand, in a federal system, powers are divided between the Centre and the States through the provisions of the the Constitution. The Constitution of India provides for a federal system of government in the country even though it describes India as 'a Union of States.' The term `Union of States' implies firstly, the Indian federation in not the result of an agreement between independent units, and secondly, the units of the Indian federation cannot secede from the federation. The Indian Constitution contains both federal and non-federal features.

#### **14.1(i) Federal Features in India**

The federal features in the Constitution of India include:

- (a) a written Constitution which defines the structure, organization and powers of the central as well as state governments;
- (b) supremacy of the Constitution, which implies that both the Centre and the state governments are subordinate to the Constitution and are expected to function according to its provisions;
- (c) a rigid Constitution which can be amended only through a special procedure, which is quite different from the ordinary law-making procedure. Some provisions of the Constitution can be amended only with the consent of legislatures of not less than one-half of the states;
- (d) an independent judiciary which acts as the guardian of the Constitution and ensures that the Centre and the States operate within their respective spheres. It also acts as the guardian of the fundamental rights of citizens;
- (e) a clear division of powers between the centre and the states. The powers which are of national importance, in which a uniform policy is desirable in the interest of the nation, have been entrusted to the centre while matters of local concern have been allocated to the states; and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(f) the creation of an upper house—Rajya Sabha, in which the states have been given representation.

The scholars' views about the Indian federation are: Wheare (Modern Constitutions) says that India has a quasi-federal system : a unitary state with federal features. K. Santhanam (Union-States Relations in India) says that the Indian federation has two peculiar unitary features: the Union government has more financial powers, and the Union government controls the States in development projects through the Planning Commission. Paul Appleby (Public Administration) characterizes the Indian system as extremely 'federal' while Jennings (Some Characteristics of the Indian Constitution) describes the Indian system as 'mainly' federal with unique safeguards for enforcing national unity and growth. Alexandrowicz (Constitutional Developments in India) says that India's federal case is unique in character while Granville Austin (The Indian Constitution — Cornerstone of a Nation) describes India as a 'cooperative' federation.

#### **14. I (ii) Unitary Features in India**

Indian federation is asymmetric, asymmetric in the sense that its units are unequal on the one hand, and the Union government is more powerful than the States, on the other. This is evident from the following:

(1) At the time of attaining independence, the federating Indian units were extremely unequal classified into States 'A', 'B', 'C' and 'D', the units were not equal in any respect. The reorganization of the states in 1956 into 14 states had only one equality among them: they were linguistically formed. From 14 states to the present 28 states demonstrate numerous asymmetrical tendencies.

(2) The state of Jammu and Kashmir has an advantage over other states. Under Article 370, it has its own Constitution. No other states of the Union of India has its own Constitution Article 371 has special

## Spardha Mithra coaching Centre

### Indian Polity and Governance

provision s/facilities for the northern-eastern states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura.

(3) Some states are too small (Sikkim, Nagaland, Meghalaya, Tripura, and the like) while some other states are too large (Uttar Pradesh, Madhya Pradesh, Maharashtra, Rajasthan) both in population as well as in territories.

(4) Some states are financially and resources-wise better than other states. Maharashtra, Gujarat, Punjab, Haryana are high income states while Andhra Pradesh, Karnataka, Kerala, Tamil Nadu, Bengal are middle income states whereas Bihar, Jharkhand, Uttaranchal, Orissa are the low income states.

(5) The federating units in India do not have equal representation in the Council of States (See Schedule IV of the Constitution).

Thus we see that the federating units are not equal in relation to each other. Nor are they considered equal by the federal government individually as well as collectively, This can be substantiated from the following:

(1) Article 3 of the Constitution empowers the Parliament to create new states, alter their boundaries, even their names. This indicates the unitary tendency.

(2) The states, in India, do not initiate the amendment proposals. It is the power of the Parliament, the national legislature. (See Article 368)

(3) The states have the power to ratify the amendment proposals, the required ratification is not more than half of the number of states. If the Union Government can manage to take along with it some minor half of the states, it can get away with any amendment. (See Article 368)

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(4) The states participate only in the amendments of a few provisions of the Constitution (only those, contained in Article 368) and not in all the provisions of the Constitution.

(5) The single judicial structure provides the Union government more importance. The Supreme Court is not only the highest court, but is also the court which controls all the subordinate courts, including the High Courts.

(6) There is no uniformity of representation of the states in the Council of States. The states are represented in the Council of States on the basis of their population (see Schedule IV).

(7) The Union Government has more subjects to make laws on. It can legislate on the Union List (97 subjects in the original Constitution) while the States legislate on the subjects in the State List (66 subjects in the original Constitution). On the Concurrent List which had 47 subjects in the original Constitution, both the Union and the States can legislate. In case both the governments make a law on any subject of the Concurrent List, the Union law prevails over the state law to the extent it goes contrary to the Union Law.

(8) The Parliament is empowered to make laws on the State List in certain circumstances: during emergencies, when states themselves request the Parliament to make such laws, when any international treaty is to be implemented; and when the Council of States declares any State List subject as of national importance. (See Articles 249, 250, 252, 253)

(9) The Governor of the State is appointed by the President and can be recalled or removed by the President and remain in office during the pleasure of the President. (See Articles 155, 156)

(10) The Governor is empowered to reserve any bill for the consideration of the President who can withhold his/her assent to such bills (Article 201).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(11) The directives from the Union Government flow to the States (Article 256) and not the vice versa.

(12) The States have to ensure the compliance of such directives, if they have to avoid action (taking over the administration of the state) under Article 365.

(13) The Union Government has more financial powers than those with the States. The States have to depend on the Union Government for financial assistance. (Articles 273, 275)

(14) Planning Commission, which is virtually the highest body in planning matters, is under the control of the Union Government. The States have to look to the Union Government for favour of development projects.

(15) Single citizenship, that is, the Indian citizenship, and numerous other measures such as uniformity in administration, all-India services, all these go to favour the Union government. And yet, Dr. B.R. Ambedkar has said that India a federal State in so far as:

(i) The Constitution provides a dual polity:

(ii) The States have not been created by the National Government:

(iii) The States derive their authority and power from the Constitution:

(iv) The Constitution has given the States a list of subjects over which it is empowered to make laws.

(v) The Constitution demands the existence of the Governor in the State (Article 154) and also the State Council of Ministers headed by the Chief Minister (Article 163).

(vi) In *S.R. Bommai v. Union of India* — 1994, the Supreme Court had declared that the States have an independent constitutional existence of their own.

#### **I4.1(iii) Union-States Relations**



## Spardha Mithra coaching Centre

### Indian Polity and Governance

The federal system adopted in India involves division of authority between the union and the states. Both the Centre and the States derive authority from the Constitution and each is sovereign within the field assigned to it. In fact, the authority of one is coordinate with that of the other. Relations between the Union and States can be studied under the following heads:

#### **I. Legislative Relations**

The Constitution divides the subjects into the union list (97 subjects), the state list (66 subjects) and the concurrent list (47 subjects). Parliament enjoys the exclusive power to legislate on subjects enumerated in the union list. This list contains subjects like defence, foreign affairs, currency, communication, inter-state trade and commerce, atomic energy, etc. State legislatures have the right to legislate on subjects in the state list (66 items) which contains subjects like health, sanitation, public order, agriculture, prisons, local government, and so forth. Both Parliament and State legislatures can legislate on subjects contained in the concurrent list (47 items). This list contains subjects like criminal law, forests, education, marriage and divorce, drugs, newspapers, books and printing press, etc. In case of conflict between the law of the State and Union law on a subject in the concurrent list, the law of the Parliament prevails. However, if a law passed by the state legislature had received the approval of the President before the enactment of the law on the same subject by Parliament, the former prevails.

Residuary powers (i.e. subjects not included in any of the lists) rest with the Union government (Article 248). Certain subjects have been deleted (Item 33) while others have been added 2A, 92A, 92B in the Union List. While items nos 11, 19, 20, 29, 36 have been deleted from the State list and 11 A, 17A, 17B, 28A and 33A have been added to be Concurrent list. Parliament can also legislate on subjects in the state list if the Rajya Sabha passes a resolution by two-third majority that it is necessary to do so in the national

## Spardha Mithra coaching Centre

### Indian Polity and Governance

interest (Article 249). During times of emergency, Parliament can make laws on subjects in the state list. In the event of the failure of constitutional machinery in the state, the Parliament can make laws with respect to all matters in the state list (Article 250). The Parliament can also legislate on a subject in the state list for giving effect to treaties and international agreements (Article 253). Finally, the Parliament can legislate on subjects in the state list if two or more states make a joint request to it to do so (Article 252). It is evident from the above the under the Indian scheme of distribution of legislative powers between the union and the states, the Parliament has been given more powers than the State legislatures. 2. Administrative Relations In the administrative field also, the Union government occupies a superior position, insofar as its executive authority extends over a larger number of subjects. Further, the States are expected to comply with the laws of the Parliament and not impede the exercise of the executive powers of the Union ( Articles 256. 257). In this regard the Union government can issue necessary directives to the states:

(a) It can issue direction regarding the construction and maintenance of means of communications of national or military importance. It can also give instructions to State governments for the protections of railways. Expenses incurred by the states on this account are reimbursed by the Union government.

(b) The President can entrust to officers of the States certain functions of the Union, but the extra costs have to be met by the Union government. (Article 258)

(c) The members of the all-India services who occupy key positions in the State administration are recruited by the Union government and give the Centre indirect control over the States.

(d) All disputes between States regarding the use, distribution or control of water are decided by the Centre. (Article 262)

(e) The President can appoint inter-state councils to advise him on inter-state disputes (Article 263).

(f) The States have to give full faith and credit to public acts, records proceeding and judicial decisions of the Supreme Court.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(g) The President appoints the chief justice and judges of the State high courts and the States have hardly any say in this matter. Similarly, the power to remove these judges also rests with the Centre. They can be removed by the President on the recommendation of the Parliament.

(h) The Central Government provides grants-in-aid to the States for the implementation of various schemes of social upliftment.

This provides an opportunity to the Centre to exercise control over the States because the grants are given subject to certain conditions. Further, it obliges the State to cooperate with the Centre if they want financial help from the Centre for the implementation of various welfare schemes. Thus, in the administrative sphere also, the Centre occupies a dominant position.

**3. Financial Relations** The States are greatly dependent on the Centre in this sphere as well. Though the Constitution provides independent sources of revenue to States (levy taxes on items nos 45 to 63 of the State List), these are not adequate. Therefore, the states have to depend on the Centre for subsidies and contributions. With regard to the borrowing of money also the position of the state is rather weak. While the Union Government has the power to borrow from within India or outside subject to the limits laid down by the Parliament from time to time, the borrowing power of the States is subject to several limitations. Thus, they cannot borrow from outside India. No fresh loan can be raised by the State without the consent of the Union Government so long there is an outstanding loan of the state. Within the country also the loans can be raised within the limitations laid down by the State legislature.

The Union government exercises control over State in financial spheres through the Comptroller and Auditor General of India, who determines the manner in which the accounts of the State shall be maintained and also audits those accounts. The grants-in-aid provided by the Union government to the States also enables the Centre to exercise control over the States (Article 275). The appointment of the Finance Commission by the President every five years, and the determination of the basis for distribution of taxes between the Centre and the States on the basis of recommendations of the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Finance Commission. adds to the importance of the Centre in financial matters. During a financial emergency, the President can ask the States to reduce the salaries of its servants and direct it to reserve all the money bills for his approval (Article 360). The 80th amendment gives 29% of the total income of the Centre to the States. A perusal of the relations between the Centre and the States shows that the framers of the Constitutions opted for a strong Centre. The Centre can exercise control over the States not only in normal times through various methods, but also during an emergency, when the federal system is virtually converted into a unitary one. Lack of sufficient resources with the States also makes them dependant on the Centre. The adoption of planning in India since 1950 and the dominance of a single party at the Centre for a long time also contributed to the strengthening of the Centre.

#### **14.2 Demand for Greater State Autonomy and Centre-States Relations' Commissions**

**14.2(i) Demand for Greater State Autonomy** The relation between Central and States continued to be quite smooth till 1967 when Congress was in power both at the Centre and most of the States. However, after 1967. strains and stresses appeared in the Centre - State relations because the Congress lost power in nine States where coalition governments were formed by the opposition parties. In 1977. the Congress lost power at the Centre and the Janata Party formed a government. Soon after assumption of power, the Janata government dismissed Congress ministries in nine States. But in 1980 Congress again returned to power at the Centre and dismissed Janata ministries in nine States. In view of the above developments. the demand for greater autonomy for the States became more vociferous. A lead in this direction was taken by West Bengal. Jammu and Kashmir, Punjab. Maharashtra, Kerala. Tamil Nadu, Andhra Pradesh, etc. A number of committees were appointed to examine how far the Centre had encroached upon the field of the States and suggest how the States could be granted genuine autonomy. These committees made several recommendations. Thus Setalvad Study Team recommended the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

constitution of an Inter-State Council and made several suggestions to rationalize relations between the Finance Commission and the Planning Commission. Likewise the Administrative Reforms Commission also recommended withdrawal of Centre from the areas reserved for the States. It also recommended formulation of certain guidelines for the exercise of discretionary powers by the Governor. Rajamannar Committee on Centre-State relations was set up by the Tamil Nadu Government. It recommended setting up of an interstate Council. It also recommended a curb on the use of Article 356 of the Constitution and suggested that Article 356 should be used only in the event of complete breakdown of law and order in a State. The committee favoured the vesting of residuary powers of legislation and taxation in the state legislature. However the above recommendations of the Rajamannar Committee were completely ignored by the Union Government.

**14.2(ii)** Some other centre-states relations commissions have given recommendations which can be stated as under: 1. Administrative Reforms Commission (1966): Its important recommendations were:

- Establishment of an Inter-State Council under Article 263 of the Constitution.
- Appointment of persons having long experience in public life and administration and non-partisan attitude as Governors.
- Delegation of powers to the maximum extent to the States.
- Transferring of more financial resources to the States to reduce their dependency the Centre.
- Deployment of Central Armed Forces in the States either on their request or otherwise.

**2. Anandpur Sahib Resolution (1973)** : The Akali Dal's resolution in Punjab demanded that the Centre's jurisdiction should be restricted only to defence, foreign affairs, communications and currency and the entire residuary powers should be vested in the States. It stated that the Constitution should be made federal in the real sense and should ensure equal authority and representation to all the States.

**3. West Bengal's Memorandum (1977)** : Its suggestions were:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (i) The word "Union" in the Constitution should be replaced by the word 'federal':
- (ii) The jurisdiction of the Centre should be confined to defence, foreign affairs, currency communications and economic coordination;
- (iii) All other subjects including the residuary powers should be vested in the States;
- (iv) Articles 356 and 357 (President's Rule) and 360 (financial emergency) should be repealed;
- (v) State's consent should be made obligatory for the formation of new states or the reorganization of existing states:
- (vi) Of the total revenue raised by the Centre from all sources, 75 per cent should be allocated to the States;
- (vii) Rajya Sabha should have equal powers with those of the Lok Sabha;
- and (viii) There should be only Central and State services and that all-India services should be abolished.

**4. Sarkaria Commission (1988) :** Some of 247 recommendations of the Sarkaria Commission can be stated as under:

1. Formation of an inter-governmental council consisting of the Prime Minister and chief ministers of states to decide collectively on various aspects of governance that cause friction between Centre and States.
2. Sparing use of Article 356 of the Constitution should be made and all possibilities of formation of an alternative government must be explored before imposing presidential rule in the State. The state assembly should not be dissolved unless the proclamation is approved by the Parliament.
3. It rejected the demand for the abolition of office of Governor as well as his selection from a panel of names given by the state governments. However, it suggested that active politicians should be appointed Governors. When the State and the Centre are ruled by different political parties, the Governor should not belong to the ruling party at the Centre. Further, the retiring Governors should be debarred from accepting any office of profit.
4. The judges of High Court should not be transferred without their consent.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

5. The three-language formula should be implemented in its true spirit in all the States in the interest of unity and integrity of the country.
  6. The work of the Union and the State governments, which directly affects the 'local people' must be carried out in the local language.
  7. Central control over radio and television should be relaxed and the individual kendras should be free to decide about the timing for the relay of national hook-up programmes.
  8. It favoured amendments for sharing certain taxes between the Centre and the States, even though it generally opposed the curtailment of the Centre's powers.
  9. In the financial sphere, it did not favour any drastic changes in the basic scheme of division of taxes but favoured sharing of corporation tax and levy of consignment tax.
  10. It did not favour banning of all-India services in the interest of the country's integrity. Instead, it favoured new all-India services.
  11. It made a strong case for inter-state councils but insisted that these should be used only for the purpose mentioned in Article 263 of the Constitution.
  12. It favoured retention of the National Development Council and suggested activation of the zonal councils.
  13. It found the present division of functions between the Finance Commission and the Planning Commission as reasonable and favoured continuance of this arrangement.
  14. It favoured determination of terms of reference of the Finance Commission in consultation with the State governments.
- It also suggested setting up of similar expert bodies at the state level. Neither the Congress (I) government under Rajiv Gandhi, nor the National Front government under V.P. Singh, accepted the recommendations of the Sarkaria Commission. After the Congress (I) government came back to power under P.V. Narasimha Rao, it decided to implement some of the recommendations of the Sarkaria Commission. However, the United Front government under Deve Gowda, soon after assumption of power in June 1996, announced its intention to fully implement the Sarkaria Commission

## Spardha Mithra coaching Centre

### Indian Polity and Governance

recommendations to impart true federal character to the Indian polity. It appointed a high-level committee to review and update the recommendations of the Sarkaria Commission. Accordingly, it activated the inter-state councils after a gap of six years, and decided to set up a panel to examine in depth the contentious issues relating to Centre-State relations. To promote healthy Centre-State relations, the United Front government favoured a system of decision-making involving adequate consultations between the States and Centre and laid emphasis on joint-decision making. This policy was also continued by the BJP led coalition government. In January 1999, the inter-state council decided to accept 124 recommendations of the Sarkaria Commission. In 2001 the interstate council decided that the Governor, after demitting office, would be banned from returning to active politics; that it would be mandatory for the Centre to consult the chief ministers on the appointment of Governors; the Governor can, however, become Vice-President or President.

#### **5. New Commission on Centre-State Relations : Punchhi Commission**

In April 2007, a new Commission was set up to re-examine Centre-State relations. The Commission headed by the former Chief Justice of India M.M. Punchhi had three members. These members are Dhirendra Singh and V.K. Duggal, both former Union Home Secretaries. N.R. Madhav Menon, former Director of National Judicial Academy is the third member. The Commission's report has been submitted to the Union Government. The major recommendations of the Punchhi Commission can be summed up as follow:-

1. There should be an amendment in Articles 355 and 356 to enable the Centre to bring specific trouble-torn areas under its rule for a limited period.
2. The commission has proposed "localizing emergency provision" under Articles 355 and 356, contending that localized areas — either a district or part of a district — be brought under Governor's rule instead of the whole State. Such an emergency provision should however not be of duration of more than three months.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

3. The commission however supports their right to give sanction for the prosecution of ministers against the advice of the state government.

4. To make an amendment in the communal violence bill to allow deployment of Central forces without the state's consent be only for a short period. It has proposed that state consent should not become a hurdle in deployment of central forces in a communal conflagration. However, such deployment should only be for a week and post-facto consent should be taken from the state.

5. Among the significant suggestions made by the Com-mission is, laying down of clear guidelines for the ap-ointment of chief minister. Upholding the view that a pre-poll alliance should be treated as one political party, it lays down the order of precedence that ought to be followed by the Governor in case of a hung house:

- (a) call the group with the largest prepoll alliance com-manding the largest number;
- (b) the single largest party with support of others;
- (c) the post-electoral coalition with all parties joining the government; and last
- (d) the postelectoral alliance with some parties joining the government and remaining including indepen-dents, supporting from outside.

6. The commission also feels that Governor should have the right to sanction prosecution of a minister against the advice of the council of ministers. However, it wants the convention of making them chancellors of universities be done away with.

7. As for qualifications for a Governor, the Punchhi Com-mission suggests that the nominee not have participated in active politics even local level for at least a couple of years before his appointment. It also agrees with the Sarkaria recommendation that a Governor be an eminent person and not belongs to the state where he is to be posted.

8. The Commission also criticises arbitrary dismissal of Governors, saying "the practice of treating governors as political football must stop". There should be critical changes in the role of the Governor — including fixed five-

## Spardha Mithra coaching Centre

### Indian Polity and Governance

year tenure as well as their removal only through impeachment by the State Assembly. It has also recommended that the state chief minister have a say in the appointment of governor.

9. Underlining that removal of a governor be for a reason related to his discharge of functions, it has proposed provisions for impeachment by the state legislature along the same lines as that of President by Parliament. This, significantly, goes against the doctrine of pleasure upheld by the Supreme Court.

10. It proposed that the appointment of Governor should be entrusted to a committee comprising the Prime Minister, Home Minister, Speaker of the Lok Sabha and chief minister of the concerned state. The Vice-President can also be involved in the process.

The practice of federal idea is, indeed, a difficult exercise. The two opposing forces are always at work : one trying to bring about integration, and other, in its efforts to fulfil regional aspirations, work in opposite direction, at times, conflictive in essence. The post-1950 period began, until late 1960s, moving towards making the Centre more powerful to the point of assuming autocratic regime, leaving behind the concept of cooperative federating as Austin had visualized. The 1960s, 1970s and 1980s saw the Indian federalism in crisis, the Centre trying during the times of Indira Gandhi, to intimidate the States, on the other challenging both the Centre and the Indian model of federalism. As Kothari wrote 'the political constitutional sphere has itself become prone to the same tendencies of centralization domination and inequity' leading to "institutional disorder." The post-1980 political situation is much different from what it was earlier: states are becoming more assertive if not dominating, the Centre is becoming more accommodative if not weakening itself : integration is not at risk and the regional identity has earned acceptance. Whatever be the merits and demerits of coalitional system, it has made the regional political parties in India see the nationalistic perspective rather clearly and in the process has strengthened the integrative forces on the one hand and helped, on the other, fulfil the regional aspirations. The national regional parties have,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

now, become, relatively more considerate, and the regional political parties. rather relatively more assertive.

#### **15. ZONAL COUNCILS**

The idea of having Zonal Councils was mooted by Jawahar Lal Nehru in 1956 "to develop the habit of cooperative working among the four or five groups of states so established. He made this decision to ward off the possible bitterness among the linguistically created states which were formed on the recommendations of the States Reorganisation Commission. Such Zonal Councils, Nehru hoped, would help create healthy inter-state and Centre-State environment with a view to solving inter-state problems and fostering balanced socio-economic development of the respective zones

##### **15.1 Composition of Zonal Council**

Five Zonal Councils were set up vide Part III of the State Reorganisation Act, 1956, these were:

- i. The Northern Zonal Council. comprising the States of Haryana, Himachal Pradesh. Jammu & Kashmir. Punjab. Rajasthan. National Capital Territory of Delhi and Union Territory of Chandigarh;
- ii. The Central Zonal Council. comprising the States of Chhattisgarh. Uttarakhand, Uttar Pradesh and Madhya Pradesh:
- iii. The Eastern Zonal Council. comprising the States of Bihar. Jharkhand. Orissa, and West Bengal;
- iv. The Western Zonal Council. comprising the States of Goa. Gujarat, Maharashtra and the Union Territories of Daman & Diu and Dadra & Nagar Haveli; and
- v. The Southern Zonal Council, comprising the States of Andhra Pradesh, Karnataka, Kerala. Tamil Nadu and the Union Territory of Puducherry.

The North Eastern States i.e. (i) Assam (ii) Arunachal Pradesh (iii) Manipur (iv) Tripura (v) Mizoram (vi) Meghalaya (vii) Nagaland and (viii) Sikkim are

## Spardha Mithra coaching Centre Indian Polity and Governance

part of North Eastern Council, set up under the **North Eastern Council Act, 1972**.

Each Zonal Council has set up a **Standing Committee** consisting of Chief Secretaries of the member States of their respective Zonal Councils. These Standing Committees meet from time to time to scrutinize items/issues sponsored for consideration of Zonal Councils, resolve as many issues as possible at their level, and recommend important issues for consideration at the meetings of Zonal Councils. Senior Officers of the Planning Commission and other Central Ministries are also associated with the meetings of the Standing Committees depending upon necessity.

Organisationally, each Zonal Council has a chairman, usually, the Home Minister. The Vice-Chairmen are the chief ministers of states of each zone. The members in each Zonal Council are the chief minister of the zone and two other ministers as nominated by the Governor of the states of each Zone together with two members from Union Territories included in the zone. There are advisors in each Zonal Council. They are one officer nominated by the Planning Commission for each of the zonal council, chief secretaries and another officer of Development Commissioner nominated by each of the states included in the Zone.

The Union Ministers may also be invited to participate in the meetings of the zonal councils.

### **15.2 Role, Objectives, Functions of the Zonal Councils The Zonal Councils**

provide an excellent forum where irritants between Centre and States and amongst States can be resolved through free and frank discussions and consultations. Being advisory bodies, there is full scope for free and frank exchange of views in the meetings of Zonal Councils. Though there are a large number of other fora like the National Development Council, Inter-State Council Governor's/Chief Minister's Conferences and other periodical high level conferences held under the auspices of the Union Government, the Zonal Councils are different, both in content and character. They are

## Spardha Mithra coaching Centre

### Indian Polity and Governance

regional fora of cooperative endeavour for States linked with each other economically, politically and culturally. Being compact high level bodies, specially meant for looking after the interests of respective zones, they are capable of focusing attention on specific issues taking into account regional factors, while keeping the national perspective in view. The main objectives of setting up of Zonal Council are as under:

- (a) bringing out national integration;
- (b) arresting the growth of acute state consciousness, re-gionalism, linguism and particularistic tendencies;
- (c) enabling the Centre and the States to co-operate and exchange ideas and experiences;
- (d) establishing a climate of co-operation amongst the States for successful speedy execution of development projects.

Each Zonal Council is an advisory body and may discuss any matter in which some or all of the States represented in that Council, or the Union and one or more of the States represented in that Council, have a common interest. Functionally a Zonal Council may discuss, and make recommendations with regard to—

- (a) any matter of common interest in the field of economic and social planning;
- (b) any matter concerning border disputes, linguistic minorities or inter-State transport; and
- (c) any matter connected with, or arising out of, the re-organisation of the States under the States Reorganisation Act.

## **16. CIVIL SERVICES UNDER THE UNION AND THE STATES**

### **16.1 Classification of Services**

The Constitution provides for three categories of civil services in the country—all India service, central services and state services. The all-India services are common to the Centre and States and include Indian Administrative Service (IAS) and Indian Police Service (IPS), etc. Parliament

## Spardha Mithra coaching Centre

### Indian Polity and Governance

can create more all-India service by law. Originally there were only two All-India Services, but subsequently new All India Services were created viz. All-India Engineering Service. All-India Forest Service etc. Central services are concerned with the administration of subjects in the union list. These include the Indian Foreign Service (FS). Indian Audit and Accounts Service (IAAS). Indian Defence Service (IDS), Post and Telegraph Service (P&T), etc. State services are concerned with the administration of subjects in the state list. The members of these services are recruited by state public service commission. The power to regulate the recruitment and conditions of service of persons appointed to public services and posts under the Union and the States has been vested in the Parliament and the State legislatures respectively.

#### **16.2 Public Service Commissions**

The responsibility for recruitment of civil servants at the Union and State levels has been entrusted to the Union Public Service Commission and State Public Service Commissions, respectively.

**Union Public Service Commission (UPSC) :** The composition of the UPSC is determined by the President. At present (2010) it consists of a chairman and ten members. Half of these have administrative experience of more than 10 years while the other half belong to professions such as those from law, academics and so on. The members of the UPSC are appointed by the President for a term of six years, or till they attain the age of 65 years. They can relinquish office earlier by tendering their resignation to the President. The President can also remove them before expiry of their term on grounds of proved misbehavior. The President can issue orders for the removal of the members of the UPSC only after the Supreme Court makes such a recommendation on the basis of an enquiry (Article 317). The members of the UPSC are not eligible for employment under the government after retirement (Article 319).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

It may be noted that the functions of the Commission are only advisory and it is not obligatory on the part of the government to act upon the advice of the Commission.

The Commission submits an annual report on the work done by it to the President. The President places the report of the Commission before the Parliament along with a memorandum as regards the cases where the advice of the Commission was not accepted and the reasons for such non-acceptance.

### **16.3 Civil Servants : Rights, Duties, Role**

The civil servants, like any other citizens, enjoy fundamental rights granted under Articles 14, 15, 16, 19 and 20. However, under proviso to Article 309, the state government has been given the power to regulate the service conditions of the civil servants. The civil servants are expected to discharge their duties with efficiency, honesty and impartiality and maintain proper discipline. Therefore, the state has been given the power to ensure that only those persons in the civil services who possess the above qualities are appointed and those who lack these qualities are kept out of the public services. The state has, therefore, been given the power to regulate their service conditions. For this purpose the state can even restrict the fundamental rights of the civil servants in the interest of efficiency, integrity, impartiality, discipline, etc.

**Role of Civil Services** India has adopted a parliamentary system of government in which the policy of the administration is determined by political leaders (ministers) who are accountable to the legislature. However, the actual implementation of the policy rests with the body of officials known as civil servants. These civil servants are also known as the permanent executive and hold office till they attain the age of retirement. On the other hand, the ministers are known as political executive and are elected for a fixed term. It is noteworthy that the civil services have

## Spardha Mithra coaching Centre

### Indian Polity and Governance

undergone complete transformation since independence on account of the adoption of goals of 'welfare state'.

The main functions of the civil servants can be summed up as under:

- 1. First,** they play an important role in the formulation and implementation of the policy. As the ministers, who head the various departments are amateurs, they are greatly dependent on the civil servants for the formulation and implementation of the policy. In fact the ministers exercise only general supervision over administration and the civil servants are left free to administer the laws as they like.
- 2. Secondly,** the civil servants provide continuity to the administration. With the change of government after the elections there is change in political leadership. On the other hand, the civil servants continue to manage the affairs of the government with loyalty and devotion and thus provide continuity to administration.
- 3. Thirdly,** bureaucracy plays an important role in the formulation of laws. In fact, the civil servants work out the details of the bill keeping in view their administrative experience. These bills are piloted in the Parliament by the ministers. In short, it can be said that almost all legislative proposals are formulated by civil servants even though these are formally introduced in the Parliament by the ministers.
- 4. Fourthly,** in view of the enormous increase in the work of the Parliament and highly technical nature of modern laws, the Parliament passes only skeleton laws, while the details of these laws are provided by the civil servants. No doubt, the rules thus formulated by the civil servants have to be placed before the Parliament for its approval. Generally, the rules framed by the civil servants are put into force in the form in which they are formulated by civil servants.
- 5. Fifthly,** the rise of administrative justice has led to the grant of certain judicial responsibilities to civil servants and they take numerous decisions



## Spardha Mithra coaching Centre

### Indian Polity and Governance

of quasi-judicial character. The decision taken by the civil servants in this type of cases is final and cannot be challenged before any court of law.

**6. Sixthly,** the civil servants play a vital role in the management of state finances. Though the Constitution vests the formal power to raise money with the Parliament, the general budget proposals are worked out by the civil servants in accordance with the general directives of the political bosses. No doubt these proposals can be modified by the Parliament. but in reality they are rarely changed and accepted as they are. After the budget is passed by the Parliament. the outflow of the funds is also regulated by the civil servants. In fact, the civil servants act as the custodians of the public funds.

**7. Finally,** the civil servants play an important role in the economic development of the country. For proper exploitation of the resources of the country and protection of individuals against exploitation, the government has taken over the management of several vital industries. The growing role assigned to the public sector in the economic development of the country further adds to the responsibility of civil servants.

## **17. KEY FUNCTIONARIES**

### **17.1 Comptroller and Auditor General of India**

The Comptroller and Auditor General (CAG) is an important official of the union government. His office has been created by the Constitution. He is appointed by the President. Generally, a person with long administrative experience and knowledge of accounts is appointed to this office. He holds office for a term of six years or till he attains the age of 65 years. However, he can relinquish office earlier. The President can also remove him from office before the expiry of his term on grounds of proved misbehavior and incapacity. The President issues order for removal of CAG only on the recommendations of the two houses of Parliament. The Comptroller and Auditor General received a monthly salary of Rs 9.000 till 1998 when it was increase to 30.000. In addition to this, he is entitled to free official

## Spardha Mithra coaching Centre

### Indian Polity and Governance

accommodation. medical benefits and other allowances. He is entitled to pension after retirement.

The Constitution ensures the independence of the CAG:

- (1) by charging his salary and other expenses for the maintenance of his office from the Consolidated Fund of India;
- (2) by providing that the salary and other service conditions of the CAG shall not be changed to his disadvantage during his tenure;
- (3) by giving him complete control over administrative staff; and
- (4) by making his removal difficult.

**Functions** Under the Indian Constitution, the Comptroller and Auditor General continues to perform the same functions and powers which he had before the commencement of the Constitution, i.e. both accounting and auditing functions. His accounting functions include maintenance of accounts of central and state governments; he prepares the annual summary of these accounts and provides directions regarding the methods and principles to be observed for the maintenance of accounts; he also submits to the President general statement relating to accounts of each year showing balances and outstanding liabilities. However in 1976, the CAG has been relieved of his responsibilities with regard to compilation and maintenance of accounts (a job which was transferred to the administrative ministries) and he is left only with auditing duties.

In short, the CAG acts as custodian and trustee of the public money. He ensures regularity of expenditure and looks into the wisdom of the expenditure. Every year, the CAG of India submits a report relating to the accounts of the Union to the President who places the same before the Parliament.

### 17.2 Attorney General of India

Attorney General is the highest legal officer of the union government and renders legal assistance to it. He is appointed by the President and holds office during his pleasure. To be eligible for appointment as Attorney General of India, a person must possess the qualifications prescribed for a

## Spardha Mithra coaching Centre

### Indian Polity and Governance

judge of the Supreme Court. He is entitled to such salary and allowances as may be determined by the President. Attorney General is entitled to audience in all courts in the country and can take part in the proceedings of Parliament and its committees. However, he is not given the right to vote. Functions : He is the chief legal adviser of the Government of India and gives it advice on all such legal matters which may be referred or assigned to him by the President. He also performs such other legal duties as are assigned to him by the President from time to time. The Attorney General appears before the Supreme Court and various High Courts in cases involving the Government of India.

#### **17.3 Election Commission**

The Constitution provides for an independent Election Commission to ensure free and fair elections to the Parliament, the state legislature, and the offices of President and Vice-President. The Election Commission consists of a Chief Election Commissioner and such other commissioners as the President may decide from time to time. Chief Election Commissioner and other election commissioners are appointed by the President for a term of five years. The term can be cut short on account of resignation or removal by the President on grounds of proved misbehavior or incapacity on the commendations of the Parliament.

#### **17.4 Finance Commission**

The Constitution, under Article 280, provides for the establishment of a finance commission by the President within two years of commencement of the Constitution and thereafter at the end of every five years. So far, the President has appointed 13 finance commissions, the last in 2007—under Dr. Vijay L. Kelkar. The finance commission consists of a chairman and four other members.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

According to the qualifications prescribed by the Parliament, the chairman is selected from among the persons who have had experience in public affairs. while the members are selected from among persons who:

- (1) are, or have been, or are qualified to be appointed judges of the High Court: or
- (2) have special knowledge of the finance and accounts of government; or
- (3) have had wide experience in financial matters and in administration: or
- (4) have special knowledge of economics.

The members of the commission hold office for such period as may be specified by the President in his orders and are eligible for reappointment.

The commission submits its report to the President who lays the recommendation of the Finance Commission before both the houses of Parliament together with an explanatory memorandum.

### **17.5 Planning Commission**

The Planning Commission was set up in March, 1950 as a result of cabinet resolution. That is why the Planning Commission is rightly described as an extra-constitutional body, which, in theory is said to be an advisory committee of the cabinet, but, in practice, has become a very vital organ of planning in India. Its job is to promote a rapid rise in the standard of living of the Indian people by the efficient use of national resources, increasing production and offering opportunities to all for employment in the service of the community. The Planning Commission is charged with the responsibility of making assessment of all resources in the country, suggesting ways of augmenting deficient resources, formulating plans for effective and balanced utilization of resources and determining priorities.

The Prime Minister is the chairman of the Planning Commission. but the commission is actually run by its deputy chairman (who enjoys the rank of cabinet minister or minister of state in some cases. The Minister of State for Planning is the ex-officio member of the Planning Commission. Some other

## Spardha Mithra coaching Centre

### Indian Polity and Governance

important ministers are also members of the Commission. The Commission has certain experts of economics as its members. The ten five-year plans and three annual plans have been formulated and executed under the Planning Commission. At present, eleventh five-year plan (2007-12) in operation.

In addition of the above functions, the Planning Commission is gradually moving from centralized planning to indicative planning where it concerns itself with the building of a long-term strategic vision of the future and decide on priorities of nation. The Planning Commission plays an integrative role in the development of the holistic approach to the policy of formulation in critical areas of human and economic development.

Besides, the Government of India (Allocation of Business) Rules have assigned responsibilities to the Planning Commission in respect of

- (a) public co-operation in nation development
- (b) hill area development programme (except in the North Eastern Region), and
- (c) Institute of Applied Manpower Research. The work of the Commission is organized into technical Divisions/Units. They are headed by Principal Advisers/ Advisers/Joint Secretaries.

All the Divisions in the Planning Commission are grouped into three types of Divisions :

- (i) Administrative Divisions: They render services pertaining to administration, accounts, library, training and other general services to the employees of the Commission.
- (ii) General Divisions: These are concerned with certain aspects of the entire economy e.g. Perspective Planning, Financial Resources, International Economics, Plan Coordination, State Plans including Multi-Level Planning, Hill Area Development Programme, Labour Employment and Manpower.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Science & Technology. Project Appraisal and Management. Development Policy and Socio-Economic Research.

(iii) Subject Divisions: These are concerned with specific fields of development e.g. Agriculture. Environment and Forests. Water Resources. Power and Energy, Industry and Minerals. Transport, Communication and Information, Village and Small Industries, Rural Development, Education, Health. Nutrition and Family Welfare, Housing & Urban Development. Social Development and Women's Programme, and Backward Classes.

#### **17.6 National Development Council**

The National Development Council (NDC) came into existence in 1956. Since beginning it was being felt that the states should also be brought into a system to give planning a nationalistic look. So to promote common economic policies in all vital spheres and to ensure a balanced and rapid development of all parts of the country, the states also participated in the planning task.

The National Development Council comprises of the Prime Minister, all the Union Cabinet Ministers, Chief Ministers of the States, representatives of the Union Territories and the members of the Planning Commission. There have been occasions when the Reserve Bank Governor and other experts have been invited to address the meetings. The large membership of the Council, which at one time rose to 50. reduced the utility of the Council for discussion as a compact body. Ultimately a Standing Committee was established with only nine Chief Ministers and a few Union Ministers as members. In addition, the Council has been appointing committees from time to time for a detailed examination of certain problems. The Prime Minister is the Chairman of the Council and the Secretary to the Planning Commission acts as its Secretary• and the Planning Commission furnishes the Council with administrative and other assistance. The Council ordinarily meets twice a year. It is interesting to note that the Council ordinarily passes no resolution formally. The practice is to have a complete

## Spardha Mithra coaching Centre

### Indian Polity and Governance

record of discussion and gather, out of it general trends pinpointing particular conclusions. Decisions are usually unanimous.

From the beginning, the National Development Council has been functioning as a high power consultative body for framing the five-year plans. In fact, its prime function is to act as a bridge between the Union Government, the Planning Commission and the State Governments. It helps in the coordination not only of policies and programmes of plans but also other matters of national importance. It provides a good forum for discussion and full and free exchange of views. It is also a device for sharing of responsibility between States and the Union Government.

#### **17.7 Central Vigilance Commission**

Central Vigilance Commission was set up by the Government of India in February, 1964 on the recommendations of the K. Santhanam Committee on Prevention of Corruption. The main task of the Vigilance Commission was to advise and guide the Union Government agencies in the field of vigilance. Consequent upon the promulgation of an ordinance by the President, the Central Vigilance Commission has been made a multi-member commission with "statutory status" in August, 1988. The Commission consists of a chief vigilance commissioner and two vigilance commissioners. The President appoints members of the commission on the recommendations of the committee which consists of the Prime Minister, Minister of Home Affairs and the leader of the Opposition in the Lok Sabha. The Chief Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

#### **17.8 Central Information Commission**

Under provisions of the Right to Information Act, 2005, the Central Government has constituted a body, known as the Central Information

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Commission. The commission includes a Chief Information Commissioner (CIC) and not more than 10 information commissioners (ICs) who are appointed by the President of India. The Central Information Commission has a duty to receive complaints from any person who does not receive a decision within the time specified by the Act, or is aggrieved by a decision of the central public information officer or state public information officer, and to conduct necessary enquiry and provide with remedy. For this purpose, the commission has the powers of a civil court. The **powers and functions** of the Central Information Commission. briefly, are:

- (i) to receive and inquire into complaints from persons denied of access to information, and to decide on appeals against the decision of designated appellate officers,
- (ii) to impose penalties on erring central public information officers and recommend disciplinary action against those who denied access to information;
- (iii) to help compensate the complainant for any loss or other damage suffered;
- (iv) to make recommendations to public authorities to strengthen the provisions of the spirit of the Right to Information Act;
- (v) to examine any record under the central or the public authority;
- (vi) to recommend reforms, every year on any matter relevant for operationalising the right to access information. The Central Information Commission has all the powers of a civil court.

#### **17.9 National Knowledge Commission**

The National Knowledge Commission is a high-level advisory body attached to the Prime Minister, with the objective of transforming India into a knowledge-based society. It covers sectors ranging from education to e-governance, focusing on knowledge paradigm. Terms of references of the National Knowledge Commission (NKC) are to build excellence in the educational system to meet the knowledge challenges for the 21g century and increase India's competitive advantage in the field of knowledge;



## Spardha Mithra coaching Centre

### Indian Polity and Governance

promote creation of knowledge in scientific and technology laboratories; improve the management of institutions engaged in intellectual property rights; promote knowledge applications in agriculture and industry; promote the use of knowledge capabilities in making government an effective, transparent and accountable service provider to citizens, and promote widespread sharing of knowledge to maximize public benefit. The NKC consults a wide range of stake-holders and experts on each area before submitting the recommendations to the Prime Minister. Each area has a working group which is headed by a prominent person in that field. The working group members meet several times to submit a report to the NKC. The NKC members then hold discussions on the report before submitting it to the Prime Minister. After submitting the recommendations, an extensive coordination also takes place with the Planning Commission of India and relevant ministries of the Government.

#### **17.10 Provisions for Minorities, Scheduled Castes, Schedules Tribes and Anglo-Indians**

For realization of the objectives of equality and justice, the Constitution pays special attention to the advancement of the socially and economically backward sections and contains a number of provisions which seek to protect the interest of minorities—religious, linguistic, cultural, etc.

##### **Provisions for Minorities**

1. The Constitution gives citizens possessing a distinct language, script or culture the right to conserve the same.
2. Children of linguistic minorities are to be given instructions through their mother tongue at the primary stage.
3. No person can be denied admission to educational institutions maintained by States or receiving aid from States on grounds of religion, race, caste, language etc.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

4. All minorities based on religion or language have the right to establish and administer educational institutions of their choice.
5. Minorities can impart instructions to children of their community in their own language.
6. No discrimination is made in matter of employment on grounds of race, religion or caste.

For the protection of minorities. **a Minorities Commission** was set up by the Janata government in January 1979 which was given a statutory status under the National Commission for Minorities Act. 1992. The commission comprises of a chairman, a vice-chairman and four members (2006) and is expected to evaluate the working of various safeguards provided in the Constitution for protection of minorities. It can make recommendations for an effective implementation and enforcement of all the safeguards and laws. It undertakes review of the implementation of the policies formulated by the Union and State governments with regard to minorities. It looks into specific complaints regarding deprivation of rights and safeguards of minorities, and conducts research and analysis on the question of discrimination against the minorities. The commission serves as a clearing house for information in respect to condition of minorities and makes periodical recommendations to the government.

**Provisions for Scheduled Castes, Scheduled Tribes and Backward Classes** For the protection and promotion of interest of Scheduled Castes, Scheduled Tribes and Other backward Classes, the Constitution makes the following provisions:

1. It requires the government to take special measures for the advancement of the interests of Scheduled Castes and Scheduled Tribes. For this purpose, the government can impose special restrictions to protect their rights.
2. Seats have been reserved for the members of Scheduled Castes and Tribes in public services and legislatures until 2020 (95th Amendment).
3. There is a provision for the organization of the National Commission for Scheduled Castes (89th amendment. 2003) and a separate one, called the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

National Commission for Scheduled Tribes (89th amendment, 2003). These commissions investigate matters relating to the safeguards provided to these classes and reports on the working of these safeguards to the President.

4. The Union Government provides special grants-in-aid to States for meeting the costs of welfare schemes for Scheduled Tribes and raising the level of administration in Scheduled Areas.

5. The States of Bihar, Madhya Pradesh, Jharkhand, Chhattisgarh and Orissa are obliged to appoint a separate minister to look after the welfare of Scheduled Castes and backward classes.

6. The States are expected to pay special attention to the educational and economic interests of the weaker sections to prevent their exploitation.

7. Schedule V and Schedule VI give to Scheduled Tribes special administrative, financial and other facilities.

**Provisions for Anglo-Indians** For the protection of the interests of the Anglo-Indian community, the Constitution makes the following provisions.

1. The President can nominate not more than two members of the Anglo-Indian community to the Lok Sabha if it does not get adequate representation in the normal course. At the level of State, the Governor can nominate one member of the Anglo-Indian community to the state legislature.

2. For the first few years of the promulgation of the Constitution, special grants were provided for the benefits of members of the Anglo-Indian community and certain posts were reserved for them in railways, customs, and postal and telegraph services.

It may be noted that these provisions for the Scheduled Castes, Scheduled Tribes and other weaker sections, are of a purely temporary nature, and shall cease to operate as soon as members of these sections shall attain parity with the rest of population.

## 18. OFFICIAL LANGUAGE

### 18.1 Hindi as Official Language and Use of English

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Constitution declares Hindi as the official language of India. However, it permits the use of English for official purposes for a period of 15 years from the commencement of the Constitution. The Parliament was authorized to allow the use of English even beyond this period. In 1964, the Parliament passed the Official Languages Act, 1964, which permitted the use of English as official language up to January 26, 1971. Again, through the Official Languages (Amendment) Act, 1967, it was provided that the use of English would continue indefinitely.

#### **18.2 Regional Languages**

The Constitution also permits certain regional languages to be used for intra-state official transactions. Initially, the Constitution recognized 14 regional languages which were included in the Eighth Schedule. These were Assamese, Bengali, Hindi, Urdu, Marathi, Gujarati, Punjabi, Sanskrit, Kashmiri, Telugu, Tamil, Malayalam, Kannada and Oriya. Subsequently, Sindhi was added to the list through the 21<sup>st</sup> Constitutional Amendment of 1967. In 1992 three additional languages—Konkani, Manipuri and Nepali, were added to the 8th Schedule by the 71<sup>st</sup> Amendment in 1992. In 2003 four more languages—Bodo, Maithali, Santhali and Dogri—were added to the Eighth Schedule—raising the number to 22.

#### **18.3 Classical Languages**

In September 2004, the Government decided to create a new category of languages viz 'classical languages' and declared.

Tamil as the first classical language. This decision was taken in the light of the recommendations of an expert committee appointed by the Sahitya Academy. As per the criteria for the declaration of a language as classical language, it should have early texts or recorded history of at least a thousand year and should have a body of ancient literature or texts.

### **19. JAMMU AND KASHMIR**

#### **19.1 Special Status for Jammu and Kashmir**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Article 370 of the Indian Constitution accords special status to the State of Jammu and Kashmir. The Constitution specifically stipulates that the provisions with respect to the State of Jammu and Kashmir are of purely temporary nature. The article was incorporated in the Constitution in pursuance of the commitment made by Jawaharlal Nehru and Maharaja Hari Singh in October 1947 at the time of signing the Instrument of Accession of Jammu and Kashmir to India. This special provision was made to assure the Kashmiris that their distinct identity would be maintained.

Article 370(1) stipulates, "Notwithstanding anything in this Constitution.

1. The provisions of Article 238 in Part VII (which was subsequently omitted from the Constitution by the 7th Amendment in 1956) shall not apply in relation to the State of Jammu and Kashmir.
2. The power of Parliament to make laws for the said State shall be limited to (a) those matters in the Union list and the Concurrent list which, in consultation with the government of the State, are declared by the President to correspond to matters specified in the instrument of accession governing the accession of the state to the dominion of India as the matters with respect to which the dominion legislature may make laws for that State; and (b) such other matters in the said lists, as with the concurrence of the government of the State, the President may by order specify.
3. The provisions of Article 1 and this article shall apply in relation to that State.
4. Such other provisions of this Constitution shall apply in relation to that State subject to such exceptions and modifications as the President may by order specify."

The Constitution further provides that no such order which relates to the matter specified in the instrument of accession of the state referred to in paragraph (i) of subclause (b) shall be issued except in consultation with the government of the State.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Besides Article 370, the Constitution contains several other provisions and exceptions with regard to the State of Jammu and Kashmir.

Some of the prominent features of the special relationship of the State of Jammu and Kashmir with the Indian Union are as follows:

1. Jammu and Kashmir has its own Constitution which was framed by a special constituent assembly set up by the state.
2. No bill providing for increasing or diminishing the area of the State or altering the name or boundary of the State can be introduced in the Parliament without the consent of the State legislature.
3. The provisions of the Indian Constitution regarding denial of citizenship to persons who migrated to Paki-stan do not apply to permanent residents of Jammu and Kashmir, who after having migrated to the territory now included in Pakistan, return to the territory of that State under a permit for resettlement in the state or permanent return issued by or under the authority of any law made by the legislature of that State, and every such person shall be deemed to be a citizen of India.
4. Certain special rights have been granted to the permanent residents of the state of Jammu and Kashmir with regard to employment under the State, acquisition of immovable property in the State, settlement in the State, and schol-arship and other forms of aid as that State government may provide.
5. Parts IV and IVA of the Constitution relating to the Di-rective Principles of State Policy and the Fundamental Duties are not applicable to the State of Jammu and Kashmir.
6. The High Court of Jammu and Kashmir enjoys very limited powers. It cannot declare any law unconstitu-tional or issue writs, except for the enforcement of the Fundamental Rights.
7. The Parliament can make laws with regard to Jammu and Kashmir only on subjects in the union list. The state list is not applicable to the State. Even the concurrent list was not applicable to the State till 1963.
8. The residuary powers in respect of Jammu and Kashmir rest with the State government and not the Union govern-ment.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

9. No decision affecting the disposition of the State of Jammu and Kashmir can be made by the Government of India without the consent of the State government.

10. Provisions of Part XVII of the Constitution apply to the State of Jammu and Kashmir only insofar as they relate to (i) the official language of the Union; (ii) the official language for communication between one state and another; or between a State and the Union; and (iii) language of the proceedings in the Supreme Court. - It .

11. No proclamation of emergency made on grounds only of internal disturbance of imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir unless (a) it is made at the request or with the concurrence of the government of the State: or (b) where it has not been so made, it is applied subsequently by the President to that State at the request or with the concurrence of the government of that State.

12. While a proclamation of emergency is in operation, nothing in Article 19 can restrict the power of the State as defined in Part III to make any law or carry out executive action which the State would, but for the provision contained in that part, be competent to make or carry out but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the proclamation ceases to operate, except as regards things done or omitted to be done before the law so ceases to have effect.

13. The Fifth Schedule pertaining to the administration and control of Schedule Areas and Scheduled Tribes and the Sixth Schedule pertaining to administration of tribal areas are not applicable to the State of Jammu and Kashmir.

It may be observed that several changes in the special status to the State of Jammu and Kashmir have been made since the inauguration of the Constitution. In December 1964, Articles 356 and 357 were extended to the State and the President was authorized to take over the administration of the State in his hands in the event of breakdown of constitutional machinery. The Parliament was also given the power to make laws for the State during the proclamation of emergency under Article 356. In 1965, the head of the State of Jammu and Kashmir was redesignated Governor

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(instead of Sadar-i-Rivasat) and the head of government of State was designated chief minister (instead of prime minister of Jammu and Kashmir).

Constant demand has been made from certain quarters to end the special status of Jammu and Kashmir. but the Government of India has firmly resisted this demand, though it has taken every possible step to encourage integration of the State of Jammu and Kashmir in the Indian Union.

#### **19.2 Constitution of Jammu and Kashmir**

Jammu and Kashmir has the distinction of being the only state of the Indian Union which has its own Constitution. This Constitution was enacted by a constituent assembly appointed by the state and came into force on January 26, 1957. The main features of Constitution of Jammu and Kashmir are as follows:

1. The Constitution vests the executive powers of the state in the Governor appointed by the President. The Governor holds a constitutional position and acts on the advice of the Council of Ministers headed by the chief minister.
2. The council of ministers is collectively responsible to the State legislature.
3. It provides for a bicameral legislature consisting of the legislative assembly and legislative council. The assembly is a popular house consisting of 100 members elected by the people on the basis of universal adult franchise. The council consists of 36 members, out of which 11 are elected by the assembly from among the people of Kashmir and 11 from among the people of Jammu and Kashmir. Six members are elected by municipal councils, educational institutions, etc. and the rest (eight) are nominated by the Governor. The Governor is also part of the State legislature.
4. The constitution provides for a High Court for the State consisting of a chief justice and two or more judges, who are appointed by the President in consultation with the Chief Justice of India and the Governor of the State.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

The High Court of Jammu and Kashmir enjoys both original and appellate jurisdiction. It is also a court of record and can punish for its contempt.

5. It declares Urdu as the official language of the State, but permits the use of English for official purposes unless the State legislature provides otherwise.

### **19.3 Jammu and Kashmir Resettlement Act**

The Jammu and Kashmir Resettlement Act, 1982, passed by J & K Assembly provided for the resettlement of all those persons who had migrated to Pakistan after March 1947 and before 1957, if they returned to Kashmir on permanent basis. The constitutional validity of the Act was challenged on the ground that if the Act was implemented it would result in 'chaos and pose a threat to country's defence and security'. Earlier, President Zail Singh referred the bill to the Supreme Court for advice in September, 1982. However, the Supreme Court returned the bill without any advice to President in November 2001 (i.e. after 19 years), which implied that the Court accepted the competence of the State Legislature to pass the bill. On 6 November 2001, J & K government decided to implement the Act. Immediately thereafter, Bhim Singh, President of the Panther's Party, petitioned the Supreme Court against the Act. On 1 February 2002 the Supreme Court stayed the implementation of the controversial Act.

## **20. FUNDS**

### **20.1 Consolidated Fund of India**

The Consolidated Fund of India is a fund where all the money received by or on behalf of the government of India in the form of revenues, fresh loans, repayment of loans, etc. are deposited. Money can be spent out of this fund only with the approval of the Parliament. However, certain expenses have been charged on the Consolidated Fund of India and can be drawn without the sanction of the Parliament. Some of the expenses charged on the Consolidated Funds of India include:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1. Salary and allowances of the President and other ex-penses on his office.
2. Debt charges of the Government of India.
3. Salaries, allowances and pensions of judges of the Su-preme Court and High Courts.
4. Salaries, allowances and pensions of the Comptroller and Auditor General of India.
5. Sums payable as a result of judgment, decree or award of a court or arbitral tribunal.
6. Other expenses declared by the Constitution or Parlia-ment to be chargeable to the Consolidated Fund.

#### **20.2 Contingency Fund of India**

The Contingency Fund of India was constituted through an act of Parliament in 1950 in exercise of powers vested in it by Article 267 of the Constitution. The fund has been placed at the disposal of the President. He can make advance out of this fund to meet unforeseen expenses. However, these expenses must be subsequently authorized by Parliament and recovered through supplementary, additional, or excess grants. It may be noted that the state governments have also established their Contingency Fund's, which have been placed at the disposal of the Governor of the state.

#### **21. INDIAN FOREIGN POLICY**

No foreign policy exists in vacuum. This is true about India's foreign policy. The foreign policy of any country, India including, develops under certain considerations. "National security" is one such consideration, for the strength of the armed forces and the armaments in the neighbouring nations create relative security problems. Economic considerations also shape the nature of the foreign policy of a country: liberalization and privatization having opened up our economy sought a new place for India in the global scenario, particularly under conditions of globalization. The energy insecurity forced us to have cordial relations, as before, with the Gulf nations. India's population has vast geographical size, her stable

## Spardha Mithra coaching Centre

### Indian Polity and Governance

democratic polity, her emergence as a responsible nuclear power and the like are our other considerations which help seek a "rightful" place for us in the community of nations. The foreign policy that India pursued after independence was that of non-alignment, a mantra that we kept repeating till 1990 while our other related foreign policy features, then, included advocacy of anti-imperialism, anti-colonialism and anti-racism stances, opposition to racial discrimination, third world solidarity, global disarmament, faith in the United Nations system. Though some of these features still constitute the bulk of our foreign policy, we have either deleted some or have regarded them as insignificant. Indeed, we have added certain others, including, in particular:

- (i) an independent foreign policy stance, emphasizing on having our autonomy in decision-making process on global matters;
- (ii) solidarity and empathy with developing countries, especially with Asian Nations;
- (iii) a deep rooted conviction in peaceful existence and for the resolution of differences and conflicts through dialogue and diplomacy;
- (iv) and an urge on the necessity of developing a self-reliant and technology strong India characterized by rapid economic development with social justice.

While all these above features have been constant in the present foreign policy formulations, some other relative features, significant in their own right, may, briefly, be stated as under:

- (i) protection of India's core national interests in the rapidly fast changing international environment;
- (ii) creation of strong international campaign against terror-ism;
- (iii) formation of a conducive international environment which supports India's economic growth in all possible fields;

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (iv) establishment of strategic ties with powers such as the USA, the EU, Japan, Russia and China;
- (v) strengthening and intensification of friendly and amicable relations with all the nations, far or near;
- (vi) realization of the objectives of SAARC;
- (vii) elimination of terrorism;
- (viii) maximization of gains from regional economic organizations associated with India;
- (ix) addressing ourselves to environmental issues of climate change so to help advance the security and development of all nations;
- (x) implementation of global disarmament;
- (xi) projection of a reformed United Nations so to make it a truly representative, responsive, responsible and transparent international organization; and
- (xii) help build equitable relations between the developing and the developed nations and work for South-South cooperation.

## **22. EMERGENCY PROVISIONS**

Articles 352-360 deal with the various types of emergencies. The main objective of these provisions is to enable the federal constitution to adapt itself according to the exigencies of the situation. The Constitution envisaged three types of emergencies viz. national emergency: emergency due to the failure of constitutional machinery in a state; and financial emergency.

**I. National Emergency** Article 352 deals with the national emergency. It provides that if the President is satisfied that a grave emergency exists whereby the security of India or any part of India is threatened, either by

## Spardha Mithra coaching Centre

### Indian Polity and Governance

war or external aggression or armed rebellion, he may make a **proclamation** of emergency in respect of the whole country or any part of it as may be specified in the proclamation. Such an emergency can be or revoked by the President by a subsequent proclamation. It may be noted that the proclamation of emergency can be made even before the occurrence of the event, if the President is satisfied that there is imminent danger of war or external aggression or armed rebellion, The President cannot issue national emergency unless the Union Cabinet communicates to him in writing that such an emergency exists. The emergency can be declared only with the concurrence of the Cabinet and not on the advice of the Prime Minister alone.

The proclamation of emergency must be approved by both the houses of Parliament within one month of the date of issue. If the proclamation is issued at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place during this period, then the proclamation is approved by the Rajya Sabha. The proclamation shall cease to operate after the expiry of 30 days from the date on which the Lok Sabha first sits after its reconstitution. unless before the expiration unless before the expiration of thirty days a resolution approving the Proclamation has been passed by the Lok Sabha. The resolution approving the proclamation must be passed by 2/3rd majority of the members present and voting in each House. Once the proclamation has been approved by the Parliament it remains in force for a period of six months from the date of passing of the resolution, unless revoked earlier. Emergency can continue beyond six months with the approval of the Parliament following the passage of such resolution, extending the emergency for six month period. The President has to revoke the proclamation earlier if the Lok Sabha passes a resolution disapproving its continuance. The proclamation of national emergency has consequences such as:

(i) The Union Government acquires the powers to issue directions to the states regarding the manner in which they have to exercise the executive power (Art. 353).

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (ii) The Parliament is empowered to legislate on any subject in the State List. It may be noted that during emergency the states can also make laws, but this is subject to overriding the power of the Parliament. [(Art. 353(b)].
- (iii) The Centre can alter distribution of revenue between the Union and the states. However such an order is to be laid before each house of Parliament and comes to an end by the end of the financial year in which the proclamation ceases to operate,
- (iv) The tenure of Lok Sabha can be extended by one year at a time and up to the period not exceeding beyond six months after the proclamation ceases to operate,
- (v) It leads to automatic suspension of freedoms guaranteed by Article 19 of the Constitution. However as soon as the proclamation of emergency ceases, the freedoms under Article 19 are automatically restored
- (vi) The President can suspend right to enforce fundamental rights granted by the Constitution (Article 359). The order regarding suspension of fundamental rights may extend to the whole or any part of the territory of India. Such an order has to be laid before each house of Parliament as soon as possible. It may be noted that the President does not possess any power to suspend the enforcement of fundamental rights guaranteed in Articles 20 and 21.

The national emergency was for the first time proclaimed in 1962 in the wake of the Chinese invasion. This emergency was also used by the government to tide over the situation arising out of the Indo-Pak war of 1965. The emergency was finally lifted in January, 1968. The second national emergency was declared in December 1971 during the Bangladesh war and the third national emergency was declared in June 1975 on grounds of internal disturbance and was revoked in March 1977. However, as a result of the 44th amendment of the Constitution it is no more possible to declare national emergency on grounds of internal disturbances. Instead it can be declared on grounds of 'armed rebellion'.

#### **2. Emergency due to the Failure of Constitutional Machinery in State :**

Article 356 of the Constitution permits the President to make a

## Spardha Mithra coaching Centre

### Indian Polity and Governance

proclamation of emergency if he is satisfied on the receipt of a report from the Governor or otherwise that a situation has arisen in which the government of the state cannot be carried on in accordance with the provisions of the Constitution. The President can also make such a proclamation if the state fails to comply with the directions of the Union government regarding exercise of its executive power. The proclamation has to be placed before each house of the Parliament for approval. It ceases to be in operation after the expiry of two months unless approved by each house. After the parliamentary approval, the proclamation remains in operation for six months. It can be extended by the Parliament for a further period of six months. The continuation of constitutional emergency beyond one year is possible only if emergency declared under Article 352 is in operation and the Election Commission certified that there are difficulties in holding elections to the state legislative assembly. After compliance with the above conditions, the maximum duration of such an emergency can be three years. The period beyond three years can be extended only through the constitutional amendment, as had happened in Punjab (1988-91).

During the proclamation of emergency under Article 356,

- (i) the President can assume to himself all or any of the power vested in or exercisable by the Governor or any other authority in the state,
- (ii) The President can declare that the powers of the legislature of the state shall be exercised by or under the authority of the Parliament,
- (iii) The President can make such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effects to the object of proclamation;
- (iv) the powers of the state legislature are to be exercised by Parliament.
- (v) The Parliament can confer on the President the power to make laws for the states. It can also authorise the President to delegate such powers to any other authority,
- (vi) If the Lok Sabha is not in session, the President can authorize expenditure from the consolidated fund of the state pending sanction of such expenditure by the Parliament.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Since the inauguration of the Constitution, this type of emergency has been declared over 110 times. until 2010. For the first time, emergency under Article 356 was declared in Punjab in 1952. The states which came under President's rule for maximum number of times were Kerala (9 times). Uttar Pradesh (9 times), followed by Punjab (8 times). In most of the cases, emergency under Article 356 was declared because no stable ministry could be formed. However, on a good number of occasions, the states were placed under Presidential rule on grounds of political expediency. Some of the governments enjoying comfortable majority in the assembly were suspended on the plea that they had lost contact with the people, or failed to protect the minority communities, or failed to maintain law and order etc. There is a growing feeling that the Constitution should be suitably amended to ensure that the Union government is not able to get rid of inconvenient state government. Some critics of Article 356 have favoured its deletion. This issue was examined by Sarkaria Commission, which however did not favour the deletion of this Article. On the other hand, Sarkaria Commission suggested a number of measures to ensure that the Centre makes use of this provision only on rare occasions. In the case of S.R. Bommai v. Union of India (1994), the Supreme Court held that dismissal of state government was subject to judicial review and the court could revive the dissolved state assembly if the dissolution was found to be judicially indefensible. The Court also laid down the following norms regarding imposition of President's rule:

- (i) No state assembly be dissolved while proclaiming emergency in the state. It should be dissolved only after Parliament has ratified the proclamation.
- (ii) The proclamation under Article 356 is subject to judicial review.
- (iii) If the Court strikes down the proclamation, it can restore the dismissed government to office and reactivate the legislative assembly;
- (iv) The Supreme Court can ask the Union government to produce the material on the basis of which the President is advised to make the proclamation.
- (v) President's rule can be imposed only on a written report from the Government,



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(vi) It is unconstitutional for the party in power at the Centre to dismiss an opposition-ruled state government.

**3. Financial Emergency** Article 360 permits the President to make a proclamation of financial emergency if he is satisfied that a situation has arisen whereby the financial stability or credit of India or part of the territory thereof is threatened. Such an emergency ordinarily remains in force for a period of two months unless it is approved by the two houses of Parliament before the expiry of that period.

The financial emergency has deep impact on the Centre-State relations.

( i) During this emergency the Union executive can give directions to any state to observe such canons of financial propriety as may be specified in the directions and be deemed necessary by the President for maintaining financial stability and credit of the state,

(ii) The President can ask the states to reduce the salaries and allowances of all or any class of persons serving in connection with the affairs of the state.

(iii) The President can also reduce the salaries and allowances of persons serving in connection with the affairs of the Union, including the judges of the Supreme Court and the High Court.

(iv) Finally, the President can ask the states to reserve all money bills passed by the state legislature for his consideration. It may be noted that so far the President has never made a proclamation of financial emergency.

It is evident from the proceeding account that the President has been vested with sweeping powers to deal with extraordinary conditions. Though several members of the Constituent Assembly bitterly criticised the emergency provisions. Dr. B.R. Ambedkar, the Chairman of the Drafting Committee justified these provisions. He said "these overriding powers are not the normal feature of the Constitution. Their use and operation are expressly confined to emergencies". The actual operation of the emergency provisions of the Constitution has shown that these powers have generally been used in the interest of the country. It is true that on a number of occasions political considerations have motivated declaration of emergency under Article 356. but the courts have, through their vigilance, sought to curb

## Spardha Mithra coaching Centre

### Indian Polity and Governance

these tendencies. Some scholars have argued that the rights of citizens have no meaning when the existence of the state is threatened.

### **23. RIGHTS' COMMISSIONS**

Numerous commissions are at work in the country. These commissions help protect the rights of the people, especially the weaker sections of our society. Among these commissions, the following major commissions together with their details are given.

#### **23.1 National Human Rights Commission**

The National Human Rights Commission (NHRC) of India, an autonomous body, was established on October 11, 1993 under the provisions of the Protection of Human Rights Act, 1993. The commission is in conformity with the Paris Principles (October, 1991). The NHRC consists of a chairperson who has been a Chief Justice of the Supreme Court of India. The other members are a judge of the Supreme Court or has been a judge; the Chief Justice of a High Court or has been so and two other members with knowledge or practical experience of human rights. The chairpersons of the National Commission for Minorities, National Commission for Women, chairpersons of National Commission of Scheduled Castes and of Scheduled Tribes are its ex-officio members. The chairperson and members of the NHRC are appointed by the President on the recommendations of a committee consisting of the Prime Minister, the Speaker of the House of the People, the Home Minister, the leaders of the Opposition in both the Houses of the Parliament and the Deputy Chairman of the Council of States. The functions of NHRC are:

1. proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation by a public servant;
2. intervene in any proceeding involving allegation of violation of human rights pending before a court;
3. visit any jail or other institution under the control of a government, where persons are detained or lodged for purposes of treatment,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

reformation or protections. for the study of the living conditions of the inmates and make recommendations;

4. review safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

5. review acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures:

6. study treaties and other international instruments on human rights and make recommendations for their effective implementation:

7. undertake and promote research in the field of human rights:

8. spread literacy among various sections of the society and promote awareness of safeguards available for the protection of these rights through publications, the media, seminars and other available means:

9. encourage efforts of NGO's and institutions working in the field of human rights;

10. take suo moto action, if required in a case if the victim is not in a position to access a court; and

11. such other functions as it may consider it necessary for the protection of human rights.

All the members are appointed for a period of five years or till the age of seventy which so ever is earlier. Any person can be removed from office on ground of proved misbehavior or incapacity and in the manner as prescribed for the judge of the Supreme Court.

The NHRC is not only an investigation body: it is also a body that holds inquiry into complaints. For this purpose. the commission broadly divides cases in these categories:

(i) custodial deaths;

(ii) police excesses (torture, illegal detention/unlawful arrest, false implication etc.):

(iii) fake encounters:

(iv) cases related to women and children;

(v) atrocities on Dalits/members of the minority community/ disabled;

(vi) bonded labour;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(vii) armed forces para military forces: and  
(viii) other important cases.

It is worthwhile to illustrate National Human Rights Commission v. State of Arunachal Pradesh case (1996) in which the Supreme Court directed the Government of Arunachal Pradesh to ensure the life and personal liberty of each and every Chakma residing within the state. The significance of this judgment also lies in clearing the doubts regarding the applicability of fundamental rights to refugees. This decision rules that foreigners are entitled to enjoy the protection of the right to life and liberty under Article 21 of the Indian Constitution. There is yet another illustration. Two writ petitions (Paramjii Kaur v. State of Punjab and Committee for Information an Punjab v. State of Punjab) were filed in the Supreme Court in 1995 containing serious charges. The apex court observed that 585 dead bodies were fully identified. 274 partially identified and 1238 unidentified and that there was flagrant violation of human rights on a large scale. On 12 December 1996 the Supreme Court requested the HR Commission to have the matter examined in accordance with law and determine all issues related with the case. The Gujarat communal riots incident is yet another Illustration which has come under the NHRC scrutiny.

### **23.2 National Commission for Women**

Women in India do not constitute a minority. They are not regarded as backward. A patriarchal society as India is, women have always suffered numerous social deprivations. Indeed, certain steps are necessary to help improve the conditions of women in the traditionally male-dominated Indian society. The Constitution does not make specific provisions in favour of women, though Articles 15(3), 21 and 14 refer to some general provisions so as to provide for specific considerations for women. The Supreme Court through interpretive processes has tried to extend some safeguards to women. Through judgments in cases such as Bodhisauwa Gautam v. Subra Chakraborty (1996) and the Chairman Railway Board v. Chandrima Das (2000), where rape was declared a heinous crime, and a landmark

## Spardha Mithra coaching Centre

### Indian Polity and Governance

judgment in *Visakha v. State of Rajasthan (1997)*, court have tried to improve the social conditions of Indian women.

The first commission was constituted on 31st January 1992 with Mrs. Jayanti Patnaik as the Chairperson. The second Commission was constituted in July 1995 with Dr. Mohini Giri as the chairperson. The third commission was constituted in January 1999 with Mrs. Vibha Parthasarathy as the chairperson. The fourth commission was constituted in January 2002 with Dr. Poornima Advani as the chairperson, while the fifth commission was constituted in February 2005 with Dr. Girija Vyas as the chairperson. Yasmeen Abrar took over as the chairperson after Girija Vyas. in 2011. though she too had resigned in July 2011. Mamta Sharma took over as the chairperson of the Commission in August, 2011. The commission, consisting of a chairperson and five other members, has the following **mandate**:

1. To investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
2. To present to the Central Government. annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
3. To make in such reports recommendations for the effective implementation of those safeguards for the improving the conditions of women by the Union or any state;
4. To review, from time to time. the exiting provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
5. To take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities;
6. To look into the complaints and take suo moto notice of matters relating to:-
  - (i) deprivation of women's rights;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objectives of equality and development;
- (iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
- 7. To call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- 8. To undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- 9. To participate and advice on the planning process of socio-economic development of women;
- 10. To evaluate the progress of the development of women under the Union and any State;
- 11. To inspect or cause to inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary;
- 12. To fund litigation involving issues affecting a large body of women;
- 13. To make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil; and
- 14. To take up any other matter which may be referred to it by Central Government.

The Union Government consults NCW on all policy matters affecting women. During the period between April 2003 and March, 2004, NCW processed 5462 complaints through its complaints and investigation cell. Workshops and seminars are organised by NCW to discuss and suggest steps for improving the conditions of women.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

NCW's achievements over the years have been commendable. Some of these achievements can be mentioned. Due to efforts of NCW, Rupali Jain was reinstated as a teacher, Smt. Savitri had approached the NCW regarding the exploitation of her deaf and dumb daughter, who, along with her child, had been deserted by her husband and in-laws, allegedly due to her disabilities. The commission took up the matter and the husband was located and counseled. He agreed to rehabilitate his wife and daughter. The commission was also successful in securing the release of Mrs. Sudha Bala (name changed) who was allegedly gangraped by BSF personnel in 2002, The victim along with her young daughter was wrongly detained in Presidency Jail in Kolkata, after the alleged rape. The matter was taken up by the commission, which resulted in the release of the rape victim and safe custody with her brother. Yasmeeen Abrar visited Farukhabad in March, 2011 in connection with Tanya murder case.

Besides these achievements, the commission has proposed amendments to a number of Acts such as the Hindu Marriage Act, 1955, Medical Termination of Pregnancy Act, 1971, and the Indian Penal Code. 1960. The commission has also proposed bills such as the MSrriage Bill of 1994, the Domestic Violence to Women (Prevention) Bill of 1994 and the Prevention of Barbarous and Beastly Cruelty against Women Bill, 1995, amongst others. Some of these bills, such as the Domestic Violence to Women (Prevention) Bill, have recently been passed. The commission has also intervened in a number of court cases.

Under support to Training and Employment Programme for Women (STEP). 21963 poor women have been benefitted during 2009-10 and Rs. 1228.56 lakh have been released to various implementing agencies across the country. **Priyadarshini**, a project, for holistic empowerment of women has also been launched. The **Swadhar** Scheme was launched during 2001-2002 for providing holistic and integrated services to women in difficult circumstances. The **uijjawala** is another scheme (December, 2007) for prevention of trafficking of women, working for 'prevention', prevention, rehabilitation. reintegration and repatriation.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Despite these achievements, it may be noted that NCW does not possess any concrete legislative powers. It does not select its own members; they are appointed by the Union Government. For its financial functioning, NCW depends on grants from the Union Government. There is a need to make NCW more effective than what it is now.

### **23.3 National Commission for Protection of Child Rights**

The children of India continue to be the most vulnerable section of the society and their growth and development remains a major concern. In India, the population of children below 18 is as high as 41%. A large proportion of these children live a life of apathy and alienation, suffering from the worst forms of deprivation and abject poverty and are victims of various forms of exploitation and abuse. According to the 2001 Census, India is estimated to have more than 400 million children below the age of 18 out of which 35 million children are in need of care. The National Commission for Protection of Child Rights (NCPCR) was set up in March 2007 under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The Commission's Mandate is to ensure that all laws, policies, programmes, and administrative mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UN Convention on the Rights of the Child. The child is defined as a person in the 0 to 18 years age groups.

The National Commission for Protection of Child Rights has one chairperson and six members. Out of six members, two are to be women members. The chairperson and members hold offices for a term of three years, while the chairperson goes upto the age of 65 years and each other member upto the age of 60 years, which so ever is earlier. All the members, including the chairperson, of the commission are appointed by the Central government. The functions of the Commission as laid out in the Act are as follows:

A. The Commission shall perform all or any of the following functions, namely;



## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (i) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation;
- (ii) present to the Central Government. annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;
- (iii) inquire into violation of child rights and recommend initiation of proceedings in such cases;
- (iv) examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence. riots, natural disasters, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures;
- (v) look into matters relating to children in need of special care and protection, including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;
- (vi) study treaties and other international instruments and undertake periodic review of existing policies, pro-grammes, and other activities on child rights and make recommendations for their effective implementation in the best interest of children;
- (vii) undertake and promote research in the field of child rights;
- (viii) spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means;
- (ix) inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization. where children are detained or lodged for the purpose of treatment. reformation or protection and take up with these authorities for remedial action, if found necessary;
- (x) inquire into complaints and take suo moto notice of matters related to:
  - i. Deprivation and violation of child rights
  - ii. Non implementation of laws

## Spardha Mithra coaching Centre

### Indian Polity and Governance

providing for protection and development of children iii. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities; and

(xi) such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions.

The Commission shall not inquire into any matter which is pending before a state commission or any other commission duly constituted under any law for the time being in force. In addition, the Commission is to perform the following functions as well:

(a) analyse existing law, policy and practice to assess compliance with Convention on the Rights of the Child, undertake inquiries and produce reports on any aspect of policy or practice affecting children and comment on proposed new legislations from a child rights perspective;

(b) present to the Central Government annually and at such intervals as the Commission may deem fit, reports upon the workings at these safeguards;

(c) undertake formal investigations where concern has been expressed either by children themselves or by concerned persons on their behalf;

(d) ensure that the work of the Commission is directly informed by the view of children in order to reflect their priorities and perspectives;

(e) promote, respect and seriously consider the views of children in its work and that of all Government departments and organizations dealing with children;

(f) produce and disseminate information about child rights;

(g) compile and analyse data on children; and

(h) promote the incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children.

The Commission, while enquiring into any matter, has all powers of the Civil Court trying a suit under the Code of Civil Procedures, 1908 and in particular, with respect to the following matters:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1. summoning and enforcing the attendance of any person from any part of India and examining him on oath;
2. requiring the discovery and production of any documents;
3. receiving evidence on affidavits;
4. requisitioning of any public record or copy thereof from any court of office;
5. issuing commissions for the examination of witnesses or documents;
6. forwarding cases to magistrates who have jurisdiction to try the same;
7. on completion of inquiry, the Commission has the powers to take the following actions:
  - a. to recommend to concerned Government for initiation of proceedings for prosecution or other suitable action on finding any violation of child rights and provisions of law during the course of an inquiry;
  - b. to approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; and
  - c. to recommend to concerned Government or authority for grant of such interim relief to the victim or the members of his family as considered necessary.

The Commission meets regularly while three months should not intervene between its last meeting and the next meeting. It prepares and publishes its annual report before 31st December every year for submission to the Central Government. The Integrated Child Development, launched in 1975, has the objectives such as

- (a) to improve the nutritional and health status of children below the age of six years;
- (b) to lay the foundation for the proper psychological, physical and social development of the child;
- (c) to reduce the incidents of mortality, morbidity, malnutrition and school dropouts;
- (d) to achieve effective coordination of policy and implementation among various departments to promote child development;
- (e) to enhance the capability of the mother to look after the child. The Integrated Child Protection Scheme (ICPS). a scheme launched during

## Spardha Mithra coaching Centre

### Indian Polity and Governance

2009-10. provides for preventive, statutory, care and rehabilitation services to children. An amount of Rs. 300 crore has been provided for this scheme during the financial year 2010-11. The National Charter for Children has been adopted in 2004. This is the Government's agenda for children: the Government's commitment to children rights to survival health, standard of living, play and leisure, education, and the like.

#### **23.4 National Commission for Scheduled Castes**

The Scheduled Castes population, according to 2001 Census has been 16.66 crores, constituting 16.23% of the total population of India. In terms of absolute numbers. the Scheduled Castes are primarily concentrated in Uttar Pradesh (3.51 crores), West Bengal (1.84 crores), and Bihar (1.13 crores). These States. together. account for 54.54% of the Scheduled Caste population of the country. Punjab occupies first position in terms of percentage of Scheduled Castes to the State population (28.85%), followed by Himachal Pradesh (24.72%) and West Bengal (23.02%). The Ministry of Social Justice & Empowerment is the nodal ministry to oversee the interests of the Scheduled Castes. Efforts made by State Governments and Central Ministries for protecting and promoting the interests of Scheduled Castes are also monitored. The 89th Amendment Act, 2003. bifurcated the erstwhile National Commission for Scheduled Castes and Scheduled Tribes into two separate and independent commissions. Article 338 provides for a National Commission for the Scheduled Castes. Thus the National Commission for the Scheduled Castes (NCSC) is a constitutional body. The NCSC consists of the chairperson. a vice-chairperson and three other members. All the members of the NCSC are appointed by the President. Their conditions of service and tenure of office are determined by the President. The **functions** of the NCSC are:

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any order of the government and to evaluate the working of such safeguards;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (b) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development in the Union and States;
- (d) to present to the President, annually and at such other time as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to measures that should be taken by the Union or a State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes: and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes as the President may, subject to the provisions of law made by Parliament, by rule specify.

The NCSC submits its annual report to the President who places the same before the Parliament along with a memorandum specifying the actions taken on the recommendations made by the NCSC.

The **powers** of the NCSC are:

- (i) to act as a civil court in all matters of investigation;
- (ii) to summon and enforce the attendance of any person from any part of India and examine him/her on oath;
- (iii) to require the discovery and production of any document;
- (iv) to receive evidence on affidavits;
- (v) to requisition any public record or copy thereof from any court or office;
- (vi) to issue summons for the examination of witnesses and documents;
- (vii) any other matter which the President may, by rule, determine.

It may be remembered that the Constitution contains several provisions in the nature of safeguards for the Scheduled Castes. Untouchability has been abolished by the Constitution and is regarded something against the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Constitution and the law. The atrocities against the Scheduled Castes and the Scheduled Tribes are being curbed through the Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Parliamentary Committee on the Welfare of the Scheduled Castes and the Scheduled Tribes in its fourth report (2006-2007) has stated that the Ministry of Social Justice and Empowerment, Ministry of Home Affairs, NCSC and NCST should meet regularly to devise ways and means to curb atrocities and ensure effective administration of the above two acts. This committee regularly reviews the progress made with regard to the welfare of the Scheduled Castes and the Scheduled Tribes.

For economic development of the Scheduled Castes, the Special Component Plan (SCP), an umbrella strategy, provides financial and physical benefits for the benefits of the Scheduled Castes. The Union Government provides special central assistance to augment SCP. During the year 2004-2005, an amount of Rs. 394.27 crore was disbursed to States/UTs as Special Central Assistance. During 2005, Rs. 268.60 crore has been released upto 31.12.2005. out of total allocation of Rs. 407.36 crore. The National Scheduled Castes Finance & Development Corporation (NSFDC) provides credit facilities to persons belonging to Scheduled Castes living below double the poverty line limits (presently Rs. 40,000/- p.a. for Rural Areas and Rs. 55,000/- p.a. for Urban Areas), for income generating activities.

The National Commission for the Scheduled Castes is doing its job remarkably well, especially in investigating the complaints of the violations of reserved quotas, though the participation of the Scheduled Castes themselves in fields relating to them is relatively low. Consequently, atrocities on the weaker sections and their low-level participation in educational institutions keep mounting.

### **23.5 National Commission for Scheduled Tribes**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Article 338A was inserted as a result of the 89th Amendment Act, 2003, through which the National Commission for the Scheduled Tribes (NCST), after the bifurcation of the earlier National Commission for Scheduled Castes and Tribes, was constituted. The National Commission for the Scheduled Tribes consists of a chairperson, vice-chairperson, and three members. The President appoints these officials and determines their conditions of service and tenure of office. The **functions** of the NCST includes:

- (i) Investigation and monitoring of all matters relating to the safeguards provided for the Scheduled Tribes;
- (ii) Inquiry into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (iii) Participating and advising on the planning process of socio-economic development of the Scheduled Tribes and evaluating the progress achieved;
- (iv) Submitting reports to the President with regard to the working of the safeguards relating to the Scheduled Tribes;
- (v) Making recommendations for the improvement of the Scheduled Tribes; and
- (vi) discharging such other functions which may help protect, develop and promote the welfare of the Scheduled Tribes.

The Commission, while investigating any matter relating to the safeguards provided to the Scheduled Tribes, has all powers of a civil court and can act accordingly.

The report of NCST, when submitted to the President, is placed before the Parliament by the President.

The Scheduled Tribes in India constitute about 8.2% of the population and 15% of the country's areas (their literacy rate is 47.10%, with the female literacy at 34.76) and in numerous ecological and geo-climatic conditions ranging from plains to forests. These groups are on different stages of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

social, economic and educational development, about 75% of them are characterized by pre-agricultural level of technology, a stagnant or declining population, extremely low literacy and subsistence level economy. About 500 such tribes have been notified under Article 342 of the Constitution. The government has to accord top priority to promote their allround development, much more than what has been done for the Scheduled Tribes in the country. The constitutional provisions for the safeguards of the Scheduled Tribes are operationalised and laws enacted to promote their welfare.

The Scheduled Tribes live in contiguous areas. It is, therefore, much simpler to have an area-approach for development activities and also regulatory provisions to protect their interests. In order to protect their interests with regard to land alienation and other social factors, the provisions of the Fifth Schedule and the Sixth Schedule have been enshrined in the Constitution.

The government is making efforts to upgrade the conditions of the Scheduled Tribes through Tribal Sub Plan (TSP) and through Special Central Assistance (SCA). The funds released under SCA to TSP to State Governments/Union Territories can be states as follows:

In addition to the above, grants under the first proviso to Article 275(1) of the Constitution provides for an assured special financial assistance for promoting the welfare of the Scheduled Tribes. The development of forest villages is another area of tribal development during the X Five Year Plan. For educational development of the ST children, the scheme of Ashram School has been launched, in addition to the pre and post matric scholarship and the vocational training opportunities. The economic development of the ST is effectively taken care of by the government.



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**23.6 National Commission For**

**Backward Classes**

The Supreme Court, in its judgment dated 16.11.1992, in a writ petition (Civil) (No. 930 of 1990) – Indira Sawhney & Ors v. Union of India and Ors. — directed the Government of India, state governments and UT administrations to constitute a permanent body in the nature of commission or tribunal for entertaining, examining and recommending upon requests for inclusion and complaints of over-inclusion and under-inclusion in the list of OBCs. In pursuance of the direction of the Supreme Court, the Government of India enacted the National Commission for Backward Classes Act, 1993 (Act No. 27 of 1993) and set up a National Commission for Backward Classes at the Centre to investigate the conditions of backward classes. Article 340 of the Constitution provides: (1) the President may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of the socially and educationally backward classes within the territory of India and difficulties under which they labour, to make recommendations as to the steps to be taken by the Union or a state to remove such difficulties to improve their conditions, and as to grants that should be made for the purpose by the Union or state and the conditions subject to which such grants should be made, and the order appointing such commission shall define the procedure to be followed by the commission; (2) a commission so appointed shall investigate matters referred to it and present to the President a report setting out the facts as found by it, and make such recommendations as it thinks proper; (3) the President shall cause a copy of the report presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

At present, there is a chairman of the National Commission for Backward Classes (NCBC), one member-secretary and three other members (2009).

Under Section 9(1) of the National Commission for Backward Classes Act, 1993, the Commission shall examine requests for inclusion of any class of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

citizens as a backward class in the Central List of Backward Classes and hear complaints of over-inclusion or under-inclusion of any backward class in the list and tender such advice to the Central Government as it deems appropriate.

Under Section 9(2) of the Act, "The advice of the commission shall ordinarily be binding upon the Central Government." Under Section 11(1) of the Act, the Central Government may, at any time, and shall, at the expiration of ten years from the Act coming into force and every succeeding period of ten years thereafter, undertake revision of the list with a view to excluding from such list those classes who have ceased to be backward classes or for including in such list new backward classes. Under Section 11(2) of the Act, the Central Government shall, while undertaking any revision referred to in sub-section (1), consult the commission. The primary **function** of NCBC is two-fold:

- (a) to consider request for the inclusion of any class of citizens as a backward class in the central list — this function makes the NCBC as a commission to work on a permanent basis;
- (b) to act as a complaint authority — this function makes the commission an important statutory body to go into the details of every incoming request, determine the claims of a class of people to be included or excluded in the list of backward classes.

Though the recommendations of the NCBC are binding on the government, yet the latter remains the ultimate authority to accept or reject the recommendations of the commission.

For educational development of the OBCs, the scholarships are awarded to the students whose parents/guardians' income does not exceed Rs. 44.500 per annum. Under the pre-matric scholarship scheme, an amount of Rs. 30 crores was released to 12 states during 2009-10. Under the post-matric scholarship scheme, an amount of Rs. 135 crores was released to 16 States/UT during 2009-10. During 2009-10, an amount of Rs 35 crores was released to 11 States/UT for construction of 17 hostels for OBCs, covering over 1000 seats. The Nationals Backward Classes Finance and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Development Corporation provides credit facilities to beneficiaries whose annual income is less than double the poverty line. Reservation is given to the OBCs besides SCs and STs, in services under the control of the government. In the case of the OBCs, reservation in services is 27%. As on January 1, 2005, the representation of the OBC in services was 1,61,818 out of 31.05.048.

### **23.7 National Commission For Minorities**

The Government of India has set up a commission to protect the rights of the minorities. It consists of a chairperson, a vice-chairperson and five members—all appointed by the President. The **functions** of the National Commission of Minorities (NCM) are:

- (a) to evaluate the progress of the development of the minorities under the Union and States;
- (b) to monitor the working of safeguards provided in the Constitution and in the laws enacted by Parliament and State legislatures;
- (c) to make recommendations for the effective implementation of safeguards for the protection of the interests of the minorities by the Central Government or State governments;
- (d) to look into specific complaints regarding the deprivation of rights and safeguards of the minorities, and take up such matters with the appropriate authorities;
- (e) to cause studies to be undertaken into problems arising out of discrimination against the minorities, and recommend measures for their removal;
- (f) to conduct studies, research and analysis on issues relating to socio-economic and educational development of the minorities;
- (g) to suggest appropriate measures in respect of any section of the minorities to be undertaken by the Central Government or State governments;
- (h) to make periodic or special reports to the Central Government on any matter pertaining to the minorities and in particular difficulties confronted by them; and

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (i) any other matter which may be referred to it by the Central Government.

The power of the NCM, acting as a civil court, are:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring production of any document;
- (c) receiving evidence on affidavit;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- and
- (f) any other matter which may be prescribed.

The reports of NCM are to be placed in the Parliament and in State legislatures, if necessary.

The constitution of the NCM, as a statutory body, augurs well for the protection of the minorities in the country. But its functions do not allow it to be an effective champion of the minorities rights in so far as it has to go along with the government of the day: a favourable government helps encourage the NCM while a hostile one makes the NCM dormant.

The minorities (such as the Muslims, Christians, Sikhs, Buddhists and the Zoroastrians) constitute about 18.47% of the country's population. Under the Constitution of India, certain safeguards have been provided to the minorities. The following are some of the important constitutional safeguards for minorities:

- (1) Articles 29 provides for rights to conserve language, script and culture;
- (2) Articles 30 gives the rights to establish and administer educational institutions of choice;
- (3) Article 347 provides for Presidential direction for recognition of language;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(4) Article 350 provides for right to submit representations for redressal of grievances to any authority in the Government in any of the languages used in the States/Union Territories.

(5) Article 350A provides for facilities for instructions through mother tongue at the primary state of education. and

(6) Article 350-B provides for a Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under the Constitution.

In 2006, the Prime Minister's New 15-Point Programme for the welfare of minorities was announced. The objectives of the programme have included:

(a) enhancing opportunities for education,

(b) ensuring an equitable share for minorities in economic activities and employment through existing and new schemes, enhanced credit support for self-employment;

(c) improving the living conditions of minorities by ensuring an appropriate share for them in infrastructure development scheme;

(d) prevention and control of communal disharmony and violence.

The government has launched three centrally sponsored scholarship schemes exclusively for the students belonging to minorities; every year, 20,000 new scholarships are awarded for technical and professional courses at under-graduate and post-graduate levels. Around 32000 scholarships were sanctioned during 2009-2010. Post-matric scholarship (around 2.64 lakh) and pre-matric scholarship (12.11 lakh) were awarded during 2009-10 to the students belonging to minorities. The facilities for free coaching are provided to the minorities' candidates aspiring for government service and public sector undertakings. About Rs. 27.17 crore was released to 38 institutes in 18 States/UT benefitting 4657 students during 2009-10. The Sachar Committee recommendations for the social, economic and educational advancement of the minorities are in the process of the follow-up action. The government has launched numerous schemes for the economic development of the minorities. During 2009-10, an amount of Rs. 11787 crores has been disbursed, benefitting 53,832

## Spardha Mithra coaching Centre

### Indian Polity and Governance

beneficiaries. The National Commission for Religious and Linguistic Minorities (NCRLM) was established on March 21, 2005 to address to Government of India's concern about the welfare needs of socially and economically backward sections among religious and linguistic minorities. The commission has a three-fold mandate: (a) to suggest criteria for identification of the socially and economically backward sections among the religious and linguistic minorities; (b) to recommend measures for the welfare to such identified backward sections. including reservation in education and government employment, and (c) to suggest necessary constitutional, legal and administrative modalities required to implements the recommendations.

### **23.8 Central Commissioner for Disabled Persons**

The office of the Chief Commissioner for Persons with Disabilities has been set up under Section 57 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 and has been mandated to take steps to safeguard the rights and ensure facilities to the persons with disabilities. The Chief Commissioner takes up with the concerned authorities on complaints filed before him/ her if the provisions of the Persons with Disabilities Act, any rules, bye-laws, regulations, executive orders or instructions are violated or are not implemented. The Act also empowers the Chief Commissioner to take suo mow notice of any such non-compliance. The Central Government appoints the Chief Commissioner. His salary and other conditions of service are determined by the Central Government. His **functions** include:

- (i) to coordinate the work of the State Commissioners;
- (ii) to monitor the utilization of funds disbursed by the Central Government;
- (iii) to take steps for protecting the rights made available to persons with disabilities; and
- (iv) to submit report to the Central Government on the implementation of the Act. The Chief Commissioner looks into the complaints relating to the deprivation of rights of persons with disabilities and nonimplementation of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

laws, rules, regulations, executive orders issued by the Central Government.

The Chief Commissioner, for the purpose of performing his duties, has the same powers as are vested in any civil court. Major activities undertaken by the Chief Commissioner in the last one year have been:

(1) 1174 cases up for consideration of the Chief Commissioner in the year 2004-05 and 977 were disposed of. In the year 2005-06 (upto December 2005). 1131 cases came up for consideration and 1068 were disposed of;

(2) organized four Training Workshops for training of Government officials and NGOs on creation of barrier-free environment and Access Audit at Lucknow, Chandigarh, Raipur and Pune. Three hundred ninety six persons participated in these workshops and were given theoretical as well as practical training;

(3) monitored the progress of modification of buildings of State Administrative Training Institutes and offices of State Commissioners for persons with Disabilities for making these as model barriers free buildings in Gujarat, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Orissa, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal and West Bengal;

(4) and published a Compilation of Judgments on Disability Issues delivered by various courts, which was released by the Minister of Social Justice and Empowerment in July 2005.

There is a National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. The objectives of this Trust are

(a) to enable and empower persons with these disabilities to live independently;

(b) to extend support to registered organizations, providing need-based services: and

(c) to evolve procedure for appointment of legal guardians for such persons.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

#### **24. GRASSROOTS DEMOCRACY : MUNICIPAL ADMINISTRATION AND PANCHAYATI RAJ**

Decentralisation of powers ensures a democratic polity. The more a political system is decentralized down to the local level, the greater are the chances of grassroot democracy being a success. Responsiveness and educative values are the added advantages of a decentralized system. A local government is always good, for it relieves the higher levels of administration of their burden, but local self-government is better always in the sense it awakens, involves and gives the local people the experience of administration at their doorsteps. Though there have developed urban administrative institutions such as municipal corporations for bigger towns, the municipalities with relatively small population. notified area committees especially specified, town area committees for relatively small towns, and cantonment boards managed by military officials. The local rural areas have institutions such as gram panchayats. panchayat samitis and the zila parishads. With the passage of times. the names and functions of these local institutions, both urban and rural have changed: the 73rd and 74th amendments (1993) are the latest enactments with regard to Nagar and Village Institutions.

#### **24.1 Urban Local Administration in India : Municipal Administration**

The history of urban bodies. both cities and towns, is fairly old in India and can be traced to the Indus Valley Civilization where emphasis was laid on the planned roads, houses and town meetings. Kautilya in his work, Arthashastra, gives a graphic description of the city of Patliputra. The Mauryas, the Guptas. the Turks and the Mughals helped city administrations to flourish, laying emphasis on sanitation. roads. inns. water supply. marketplaces. public utility works. Sher Shah Suri had built the Grand Trunk Road connecting the farwestern town of Peshwar with the far-eastern town of what is known as Kolkata today.

During the British colonial rule. towns and cities developed the first municipal corporation was created in Madras in the year 1688. Calcutta



## Spardha Mithra coaching Centre

### Indian Polity and Governance

and Bombay following Madras in 1772 and 1793 respectively. The number of corporations in India rose rapidly in independent India : in 1975. there were 34 municipal corporations and 68 in 1986. Thus have increased the number of other local urban institutions in the country. The total numbers of towns in the country are around five thousand while the percentage of villages in India is around 80 percent of the total population, i.e. more than 6 lakhs (2005-06).

Corporations, municipalities, notified area committees, town area committees, and cantonment boards are the other urban local institutions in India. The organization of each such institution varies from state to state, so do vary their functions as well.

Usually, a municipal **corporation** is headed by the elected mayor while the administration of the city is carried on by an elected council. The powers of the Municipal Corporation are usually exercised by (i) General Council. Standing Committees and the Municipal Chief Executive Officer. The councillors are elected by the people for a particular period. Alongwith the councillors, there are certain aldermen, elected by the councillors. The council, consisting of the councillors and aldermen elect the mayor and the deputy mayor. The mayor. and in his absence. the deputy mayor, presides over the meetings of the Council. The mayor is the ceremonial head of the council, and hence the first citizen of the city. The General Council makes laws. byelaws, passes budget. appoints committees. and supervises the functioning of various departments of the corporation. There are various standing committees in the corporation. elected by the council, to carry on most of the administrative work including taxation, finance, health and sanitation. water and electricity supply. The municipal commissioner, as the chief executive officer of the corporation, who is appointed by the state government usually, supervises the administrative work. The business of the corporation relates to functions such as public health, education, construction and maintenance of waterworks. and sewerage, streets and bridges. parks. recreation grounds. markets, shopping centres and for doing these and such other things, corporations can raise taxes as well

## Spardha Mithra coaching Centre

### Indian Polity and Governance

property tax. tax on buildings. education cess. tax on profession and the like.

**Municipalities** are established in smaller towns through the Acts of the state government. Their organizations vary from state to state. These differ from corporations because they are set up for smaller areas and for smaller populations and they have lesser sources of revenues. Like corporations, municipalities have three authorities: council and • it committees, chairman/president of the council and chief executive officer or chief municipal officer. The strength of the municipal councils differs from state to state depending upon their relative population. The members of the council are elected by the voters on the basis of universal adult franchise for a period which ranges between three to five years. The council decides issues such as policy matters, prepares budgets. imposes taxes, makes rules and regulations. laws and byelaws. Most of the functions of the municipal council are done by the committees. The chairman or the President of the council is the ceremonial head and performs the functions of the presiding officer, though in some states he does the executive and administrative tasks as well. The functions of the municipal officer relate to the conduct and supervision of the administration in the concerned area. The municipalities have to do almost the same functions as the corporations; i.e., civic functions. some compulsory or obligatory and some optional. but almost all dealing with tasks such as public health and public sanitation, education, especially of primary level, public utility works, water and electricity supply maintenance of street. roads. parks. sewerage system. Most of their expenditure is met by levying taxes and receiving grants from the State and the Central Governments.

Small urban areas such as notified areas, town areas and cantonment boards are bodies where administration is done through appointed officials with government's supervision and control. They do the local level functions as do the municipalities and corporations.

#### **24.2 The 74th Amendment : Urban Administration**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

With the passage of the 74th amendment (1993), the whole local urban administration has been given a new structure with new orientation relating to their organizations, functions and finances. The amendment has added 12th schedule in the Constitution. Part IX A. dealing with Articles from 243P to 243ZA deal with municipal bodies. Articles 243P defines municipalities. committees etc: By 'committee' means committee constituted as under Article 243S; 'metropolitan' area means area having a population of ten lakhs or more comprised in one or more districts and consisting of two or more municipalities or panchayats; 'municipal area' means the territorial area of municipalities: 'municipalities' mean institutions of self-government: 'nagar panchayat' means a transitional area, an area in transition from a rural area to an urban area: 'municipal council' for a smaller urban area and 'corporation' for a larger urban area.

The main **features** of the 74th Amendment, relating to the urban administration are:

Constitution of municipalities — There shall be constituted in every State.

(a) a nagar panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area:

(b) a municipal council for a smaller urban area; and

(c) a municipal corporation for a larger urban area. in accordance with the provisions of this Part: (Article 243Q) The Constitution of Municipalities:

1. Same as provided in clause

(2), all the seats in municipality shall be filled by persons chosen by direct election from the territorial constituencies in the municipal area and for this purpose each municipal area shall be divided into territorial constituencies to be known as wards. 2. The legislature of a State may, by law, provide (a) For the representation in a Municipality of

(i) persons having special knowledge or experience in Municipal administration:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(ii) the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the municipal area:

(iii) the member of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;

(iv) the Chairpersons of the committees constituted under clause (5) of Article 243S provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the municipalities; (Article 243R)

(b) the manner of election of the chairperson of a municipality. The constitution and composition and composition of wards committees, etc. —

(1) There shall be constituted wards committees, consisting of one or more wards, within the territorial area of a municipality having a population of three lakhs or more.

(2) The legislature of a State may, by law, make provision with respect to:

(a) the composition and the territorial area of a ward committee;

(b) the manner in which the seats in a ward committee shall be filled.

(3) A member of a municipality representing a ward within the territorial area of the wards committee shall be a member of that committee.

4) Where a ward committee consists of :

(a) One ward, the member representing that ward in the municipality;  
or

(b) Two or more wards, one of the members representing such wards in the municipality elected by the members of the ward committee, shall be the chairperson of that committee. (Article 243S)

The reservation of seats —

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a municipality.

(4) The offices of chairpersons in the municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide. The reservation of seats under clause (1) and (2) and the reservation of offices of chairpersons (other than the reservation for women) under clause

(5) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this part shall prevent the legislature of a State from making any provision for reservation of seats in any municipality or offices of chairpersons in the municipalities in favour of backward class of citizens. (Article 243T)

The term of municipalities, etc. —

Every municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its

## Spardha Mithra coaching Centre

### Indian Polity and Governance

first meeting and no longer provided that a municipality shall be given a reasonable opportunity of being heard before its dissolution.

No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).

1) An election to constitute a municipality shall be completed:

(a) before the expiry of its duration specified in clause (1);

(b) before the expiration of a period of six months from the date of its dissolution provided that where the remainder of the period for which the dissolved municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.

2) A municipality constituted upon the dissolution of a municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved municipality would have continued under clause (1) had it not been so dissolved. (Article 243U) Article 243 V deals with the disqualifications of the members.

The authority and responsibilities of municipalities are: Subject to the provisions of this Constitution, the legislature of a State may, by law, endow:

(a) Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities, subject to such conditions as may be specified therein, with respect to:

(i) the preparation of plans for economic development and social justice;

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule:

(b) Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule. (Article 243 W) The power to impose taxes by and functions of municipalities — The legislature of a State may, by law,

authorize a municipality to levy, collect and appropriate taxes, duties, tolls and fees in accordance with such procedure and limits laid down the legislature; or. assign to a municipality certain taxes, duties. tolls and fees levied and collected by the State Government subject to conditions and limits laid down by the government;

(a) provide for making such grants-in-aid to the municipali-ties from the Consolidated Fund of the State; and

(b) provide for constitution of such funds for crediting all moneys received, respectively, by or on behalf of the municipalities and also for withdrawal of such moneys therefrom. as may be specified in the law.

Finance Commission —

1. A Finance Commission constituted under Article 243 1 shall also review the financial position of the municipali-ties and make recommendations of the Governor as to :

(a) principles which should govern:

(i) the distribution between the State and the municipali-ties the net proceeds of the taxes, duties, tolls and fees leviable by the State, which may be divided between them under this Part and the allocation between the municipalities at all levels of their respective shares of such proceeds;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

(ii) the determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by the municipalities;

(iii) the grants-in-aid to the municipalities from the Consolidated Fund of the State;

(b) the measures needed to improve the financial position of the municipalities;

(c) the grants-in-aid by the Governor in the interests of sound finances of the municipalities.

2. The Governor shall cause every recommendation made by the Commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the State. (Article 243 Y)

The elections to municipalities —

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the municipalities shall be vested in the State Election Commission referred to in Article 243K.

2. Subject to the provisions of the Constitution, the legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the municipalities. (Article 243ZA)

From the above description of the Articles, one can describe the **organization, functions** and other details of the municipal bodies.

The Constitution, as amended, provides for the establishment of Nagar Panchayats for transitional areas (that is to say, an area in transition from a rural area to an urban area), Municipal Councils for smaller urban areas and Municipal Corporations for larger urban areas. However, no municipality can be constituted in areas that come under the jurisdiction of an industrial establishment that provides or proposes to provide municipal services therein.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

All the seats in municipal bodies are filled by persons chosen by **direct election** from the territorial constituencies in the municipal area. However, the legislature of a State may, by law, provide for the representation in a municipal body of persons having special knowledge or experience of municipal administration, the members of Rajya Sabha, Lok Sabha and the members of Legislative Council and Legislative Assembly of the State, representing constituencies which comprise wholly or partly the municipal area and the chairpersons of wards committees. There are wards committees, consisting of one or more wards, within the territorial area of a municipal body having a population of three lakhs or more. The legislature of a State may, by law, make provisions with respect to the composition and the territorial area of a ward committee and the manner in which the seats in a ward committee are filled. However, the legislature of a State can make provisions for the constitution of other committees in addition to the wards committees.

Seats are reserved for the Scheduled Castes and the Scheduled Tribes in every municipal body in proportion to their population. Out of these reserved seats (for Scheduled Castes and Scheduled Tribes), one-third would be reserved for women belonging to these communities.

Similarly, not less than one-third of the total number of seats to be filled by direct election in every municipal body are reserved for women (including their reservation in the quota of Scheduled Castes and Scheduled Tribes).

Similarly, the offices of chairpersons in the municipal bodies are reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may, by law, provide. The legislature of a State may also make provisions for reservations of seats in municipal bodies or offices of chairpersons, for other Backward Classes.

A person who has attained the age of 21 years is eligible to be elected as a member of a municipal body. The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to municipal bodies is vested in the State Election Commission. constituted

## Spardha Mithra coaching Centre

### Indian Polity and Governance

with reference to holding elections for Panchayati Raj institutions. The tenure of every municipal body is five years. The municipalities can, however, be dissolved earlier after giving them reasonable opportunity of being heard. The election of the new municipal body is to be held before the expiry of its tenure or within six months of its dissolution, as the case may be.

The legislature of a State may extend **powers and authority** of municipal bodies, if necessary, to enable them to function as institutions of self-government. It may authorize a municipal body to levy, collect and appropriate such taxes, duties, tolls and fees as it thinks fit. It may also assign a share in those taxes, duties, tolls and fees that are levied and collected by the State Government itself. It may also make provisions for making grants-in-aid to municipal bodies from the Consolidated Fund of the State. It may also provide for constitution of such funds for crediting all money received by the municipal bodies and their withdrawal. The Finance Commission, constituted with reference to Panchayati Raj institutions, is to review the financial position of the municipal bodies and make recommendations to the Governor, as to the principles, which would govern the distribution between the State and the municipal bodies of the net proceeds of the taxes.

The Schedule 12 identifies as many as 18 functions for nagarpalikas, such as urban planning regulation of land-use, construction of buildings, planning for economic and social development, roads and bridges, water supply, public health, sanitation, fire services, urban forestry, slum improvement, urban poverty alleviation, urban amenities aesthetics aspects, burials and burial grounds, cattle pounds and prevention of cruelty to animals, public amenities such as lighting lots, bus stops and public conveniences, regulation of slaughter houses.

However, these are not mandatory but are common with the work area of state government between (for example water supply, urban planning), sometimes generating conflict between the state and urban municipal administration. Another serious deficit may be described as the state

## Spardha Mithra coaching Centre

### Indian Polity and Governance

government's control over the urban institutions. The Government control is always pervasive, state's finances which flow as routine sometimes stop as willed by the state government. The accountability factor in the urban institutions is always weak though the structure of the institutions is elaborate, provisions with regard to decentralization in the cities and towns are always vague: ward committees have not been effective, nor do they participate in their zonal committees effectively. There is a lack of proximity between the elected representatives and the people who elect them. Power sharing between the union government and the state governments has not been a happy exercise in India. The same has been the case between state governments and the local bodies more or less.

#### **24.3 Panchayati Raj : Historical Overview**

Panchayati Raj system. in India, had existed from times as far back as we can imagine. Evidences from the time of the Rig-Veda suggest the existence of self-governing bodies in the villages. With the passage of times, these bodies became panchayats (council of five persons). Panchayats constitute functional institutions of grassroots governance in villages : The used to distribute land among the farmers and collect revenue (in kind earlier and in cash later, especially during the times of the British rule). Thus, with the passage of times and particularly during the British colonial rule, the village self-sufficiency gave way to feudalism and zamindari system leading to exploitation of the farmers, rural poverty. unemployment, and backwardness. The British commercialization of agriculture destroyed all that was good in village India. Gandhi's village (gram) swaraj was an attempt to give back to the village panchayats what was lost during the British rule, though during the period of national movement much was not done by the leadership in this regard. (Gandhi favoured the village swaraj and Dr. B.R. Ambedkar opposed the idea.) During the drafting of the Constitution, the Directive Principles of State Policy (DPSP). under Article 40. provided for the state's efforts to organize the village panchayats as units of self-governance, though the complete Part IV dealing with Directive Principles of State Policy was made non-justiciable.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Panchayati Raj, as an institution, has gone through numerous stages. The first five year plan failed to bring about active participation of the people in the plan processes. The second five year plan sought to cover the entire countryside with National Extensive Service Blocks through officials and locally elected people, but this too failed to attain the desired results relating to grassroots democracy. The **Balwantrai Mehta Committee** (1957) studied the Community Development Projects and the National Extension Service. This committee held the view that community development would come up if the community, especially the village one, was involved in the planning, decision-making and implementation. The suggestions given by the Balwantrai Mehta Committee were:

- (1) an early establishment of elected local bodies and devolution to them of necessary resources, power and authority;
- (2) that the basic unit of democratic decentralization was at the block samiti level since the area of jurisdiction of the local body should neither be too large nor too small. The block was large enough for efficiency and economy of administration, and small enough for sustaining a sense of involvement in the citizens;
- (3) such body must not be constrained by too much control by the government or government agencies;
- (4) the body must be constituted for five years by indirect elections from the village panchayats, its functions should cover the development of agriculture in all its aspects, the promotion of local industries and services such as drinking water, road building, etc.: and
- (5) the higher level body, Zilla Parishad, would play an advisory role.

The structure of Panchayati Raj Institutions (PRIs), which developed subsequently, did not yield requisite democratic momentum. Hence, the expected rural development did not occur. Political and bureaucratic interference by the state, lack of adequate financial resources, apathetic awakening at the rural level, domination of the rural elite and the like were the major factors responsible for the dismal results.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

As the prime reason responsible for not achieving the results of the rural development was fiscal, the **K. Santham Committee** (1963) was appointed to give the details of the PRI finances. The committee recommended the following:

- (a) panchayats should have special powers to levy special taxes on land revenues and home taxes. etc..
- (b) people should not be burdened with too many taxes;
- (c) all grants at the state level should be mobilized and sent in a consolidated form to various PRIs: and
- (d) a Panchayati Raj Finance Corporation should be set up to look into the financial resources of PRIs at all levels, provide loans and financial assistance to these grassroots level governments and also provide non-financial requirements of villages.

These issues have been debated over the last three decades and have been taken up by the State Finance Commissions which are required to select taxes for assignment and sharing, identifying the principles for such sharing and assignment, determine the level of grants and recommend the financial distribution of state's transfers to local authorities.

The Janata Party rule at the Centre (1977) found numerous weaknesses in the functioning of the Panchayati Raj. The government decided to appoint a high level committee under the chairmanship of Ashok Mehta (1978) to examine the measures to strengthen PRIs. The recommendations of the **Ashok Mehta Committee** were:

- (i) the district is a viable administrative unit for which planning, coordination and resource allocation are feasible and technical expertise available:
- (ii) PRIs as a two-tier system. with Mandal Panchayat at the base and Zilla Parishad at the top:
- (iii) the PRIs are capable of planning for themselves with the resources available to them:
- (iv) district planning should take care of the urban-rural continuum;
- (v) representation of SCs and STs in the election to PRIs on the basis of their population;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (vi) four-year term of PRIs;
- (vii) participation of political parties in elections; and
- (viii) any financial devolution should be committed to accepting that much of the developmental functions at the district level would be played by the panchayats.

The states of Karnataka, Andhra Pradesh and West Bengal passed new legislations based on this report. However, the flux in politics at the state level did not allow these institutions to develop their own political dynamics.

The **G.V.K. Rao Committee** was appointed in 1985 to look at various aspects of PRIs once again. The committee was of the opinion that a total view of rural development must be taken in which PRIs must play a central role in handling people's problems. It recommended the following:

- (a) PRIs have to be activated and provided with all the required support to become effective organizations;
- (b) PRIs at the district level and below should be assigned the work of planning, implementation and monitoring of rural development programmes; and
- (c) the block development office should be the spinal cord of the rural development process.

**L.M. Singhvi Committee** studied the Panchayati Raj system in 1986. The Gram Sabha was considered as the base of a decentralized democracy, and PRIs were viewed as institutions of self-governance which would actually facilitate the participation of the people in the process of planning and development. It recommended:

- (a) local self-government should be constitutionally recognized, protected and preserved by the inclusion of new chapter in the Constitution; and
- (b) non-involvement of political parties in Panchayat elections.

The suggestion of giving panchayats constitutional status was opposed by the Sarkaria Commission, but the idea, gained momentum in late 1980s by the late Prime Minister Rajiv Gandhi who introduced the 64th Constitutional Amendment Bill in 1989. The 64th Constitutional Amendment Bill was prepared and introduced in the lower House of

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Parliament. But it got defeated in the Rajya Sabha as non-convincing. He lost the general elections. In 1989, the National Front Government introduced the 74th Constitutional Amendment Bill, which could not become an Act because of the dissolution of the Ninth Lok Sabha.

#### **24.4 Rural Administration and the 73rd Amendment : Panchayati Raj Institutions**

Part IX. from Articles 243 to 2430, deals with the institutions of Panchayats. Article 243 defines Panchayats to include Gram Sabha. Gram Panchayat. a Panchayat at the intermediate level as also one at the district level. The constitutional provisions relating to panchayats can be stated as follows:

**243A.** Gram Sabha — A Gram Sabha may exercise such powers and perform such functions at the village level as the legislature of a State may, by law, provide.

#### **243B.** Constitution of Panchayats

(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this part.

(2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

#### **243C.** Composition of Panchayats:

(1) subject to the provisions of this Part, the legislature of a state may, by law, make provisions with respect to the composition of Panchayats provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the state.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(2) all the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and, for this purpose. each Panchayat area shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the panchayat area.

(3) The legislature of a State may, by law, provide for the representation

(a) of the chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

(b) of the chairpersons of the Panchayats at the intermediate level, and the district level:

(c) of the members of the House of the People and the legislative assembly of the State representing constituencies which comprise wholly or partly a Panchayat area at a level other than the village level. in such Panchayat;

(d) of the members of the Council of States and the members of the Legislative Council of the State. where they are registered as electors within a Panchayat area at the intermediate level, and at the district level.

(4) The chairperson of a Panchayat and other members of a Panchayat whether or not chosen by direct election from territorial constituencies in the Panchayat area shall have the right to vote in the meetings of the Panchayats.

(5) The chairperson of

(a) a Panchayat at the village level shall be elected in such manner as the legislature of a State may, by law, provide; and

(b) a Panchayat at the intermediate level or district level shall be elected by, and from amongst, the elected members thereof.

**243D. Reservation of Seats:**

(1) Seats shall be reserved for:



**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (a) the Scheduled Castes; and
- (b) the Scheduled Tribes.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.

**243E.** The term of Panchayats has to be five years unless dissolved earlier than that; the election for a new Panchayat to be completed within six months before the expiration of its normal term; no election for a new panchayats if there remains six months of their normal term.

**243F** Deals with the disqualifications for membership (to be stated by law).

**243G.** Powers, Authority and Responsibilities of Panchayats

Subject to the provisions of this Constitution, the legislature of a State may, by law, confer on Panchayats such powers and authority as may be necessary to enable them to function as an institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities to Panchayats at the appropriate level. subject to such conditions as may be specified therein, with respect to:

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic de-velopment and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

**243H.** Powers to impose taxes by, and funds of. the Panchayats

## Spardha Mithra coaching Centre

### Indian Polity and Governance

- (1) The legislature of a State may, by law: (a) authorize a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and limits laid down by the state legislature; (b) assign to a Panchayat such taxes, duties, tolls and fees levied and collected by the state government for such purposes, subject to conditions and limits specified; (c) provide for making such grants-in-aid to the Panchayats from the Consolidated Fund of the State: and (d) provide for constitution of such funds for crediting moneys received, by or on behalf of the Panchayats and also for the withdrawal of such moneys therefrom, as may be specified in the law.
2431. Constitution of Finance Commission to review financial position: 1. The Governor of a State shall, as soon as possible, may be within one year from the commencement of the Constitution (73'd Amendment) Act, 1992 and there-after at the expiration of every fifth year, constitute a finance commission to review the financial position of the Panchayats and to make recommendations to the Governor as to: (a) principles which should govern: (i) the distribution between the State and the panchayats of the net proceeds of the taxes, duties, tolls, and fees leviable the State. which may be divided, between them under this Part and the allocation between the Panchayats at all levels of their respective shares of such proceeds; (ii) the determination of the taxes, duties, tolls and fees which may be assigned to. or appropriated by the Panchayats; (iii) the grants-in-aid to the Panchayats from the Consolidated Fund of the State. (b) the measures needed to improve the financial position of the Panchayats; (c) any other matter referred to the Finance Commission by the Governor in the interests of sound finance of the Panchayats.
- (2) The legislature of a State may, by law, provide for the composition of the Commission. the qualifications which shall be requisite for appointment as members thereof and the manner in which they shall be selected.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (3) The Commission shall determine their procedure and shall have such powers in the performance of their functions as the legislature of the State may, by law, confer on them.
- (4) The Governor shall cause every recommendation made by the commission under this article together with an explanatory memorandum as to the action taken thereon to be laid before the legislature of the state.

**243j.** Audit of Accounts of Panchayats

**243K.** Elections to the Panchayats

1. The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
2. Subject to the provisions of any law made by the legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine provided that the State Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.
3. The Governor of a state shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (I).
4. Subject to the provisions of this Constitution. the legislature of a State may. by law, make provisions with respect to all matters relating to, or in connection with, elections to the Panchayats.

From the above, certain features relating to the Panchayati Raj Institutions are:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1. The Gram Sabha or village assembly as a deliberative body to decentralized governance has been envisaged as the foundation of the Panchayati Raj System having a population of over 2,000,000.
2. A uniform three-tier structure of panchayats at village (Gram Panchayat — GP), intermediate ( Panchayat Samiti — PS) and district (Zilla Parishad — ZP) levels. It is for all the states.
3. All the seats in a panchayat at every level are to be filled by elections from respective territorial constituencies.
4. Not less than one-third of the total seats for membership as well as office of chairpersons of each tier has to be reserved for women.
5. Reservations for the scheduled castes and tribes (SCs and STs) have to be provided at all levels in proportion to their population in the Panchayats.
6. To supervise, direct and control the regular and smooth elections to panchayats, a State Election Commission has to be constituted in every State and Union Territory (UT).
7. The Act has ensured constitution of a State Finance Commission in every State/UT, for every five years, to suggest measures to strengthen finances of PRIs.
8. To promote bottom-up planning, the District Planning Committee (DPC) in every district has been accorded constitutional status.
9. An indicative list of 29 items has been given in Eleventh Schedule of the Constitution. Panchayats are expected to play an effective role in planning and implementation of works related to 29 items, which include, among others, agriculture, land improvement, animal husbandry, fisheries, a rural social forestry, khadi and village industries, rural housing, drinking water, fuel and fodder, bridges, ferries, waterways, rural electrification, poverty alleviation, and public distribution system.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The lack of fund, apathy at the rural level, the division of power resulting in duplication and sometimes triplication of responsibility, and frequent state interference in one form or another slows down the work of PRIs and renders them inefficient. Other drawbacks of PRIs are:

1. The uniformity of the system undermines each state's unique history, traditions and consequent structures of local government.
2. Representation of members of parliament and state legislatures are often counter-productive. There are clashes of interests between legislators and PR representatives particularly, for getting votes.
3. The Act does not define role of political parties clearly. It doesn't mention that political parties can enter the election arena in their formal capacity.
4. The Act is silent about the relationship between PRIs and local bureaucracy.
5. The Act doesn't spell out specific grounds for dissolution of PRIs by states. This gives scope for the states to dissolve PRIs on political considerations.

Though, the PRI system has so many positive features, yet the elite control over the system, apprehensions of state level leaders challenging their power and the lukewarm attitude of the bureaucracy have not yet allowed the PRIs to function as real democratic institutions with people's participation. Studies from different states in India clearly prove that even though some states have shown political activism to implement PRIs, the unequal social structure and rigid caste system prevalent in Indian villages coupled with power-hungry local bureaucracy kill the spirit of the system.

#### **24.5 District and Metropolitan Planning**

The 73rd and the 74th amendments bestow the planning tasks on the local, rural and urban bodies. The Constitution makes elaborate provisions.

**243ZB.** Committee for District Planning. :

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1. There shall be constituted in every State at the district level a District Planning Committee to coordinate plans prepared by the panchayats and the municipalities in the district and to prepare a draft development plan for the district as a whole.
2. The legislature of a state may, by law, make provisions with respect to: (a) the composition of the District Planning Committee; (b) the manner in which the seats in such Committee shall be filled provided that not less than four-fifths of total number of members of such Committee shall be elected by and from amongst the elected members of the Panchayat at the district level and of the municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district; (c) the functions relating to district planning which may be assigned to such Committees; and (d) the manner in which the chairpersons of such committees shall be chosen.
3. Every District Planning Committee shall, in preparing the draft development plan. (a) have regard to (i) matters of common interest between the Panchayats and the municipalities; (ii) matters of common interest between the municipalities and the panchayats, including coordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation; (iii) the overall objectives and priorities set by the Government of India and the Government of the State; (iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise; and (v) consult such institutions and organizations as the Governor may, by order, specify.
4. The chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

The above articles can be summed up in simple words as thus:

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Committees for **District Planning** are to be constituted in every state at the district level to consolidate the plans prepared by the Panchayats and the Municipal bodies in the district and to prepare a draft development plan for the district as a whole. Planning Committee needs to, in preparing the draft development plan, have regard for matters of common interest between the Panchayats and Municipal bodies. The chairperson of every District Planning Committee forwards the development plan to the Government of the State. An area having a population of 1,000,000 or more, comprised in one or more districts and consisting of two or more municipal bodies or Panchayats may be declared by the Governor of the State as a Metropolitan area. Every Metropolitan Area has a **Metropolitan Planning** Committee to prepare a draft development plan for the Metropolitan area as a whole. The legislature of a state may, by law, make provisions with respect to: composition of the Metropolitan Committees and the manner in which seats in such committees are to be filled; the representation in such committees of the Union and state governments; the manner in which the chairpersons of such Committees should be chosen. However, not less than two thirds of the members of such committees are elected by, and from amongst, the elected members of the municipal bodies and the chairpersons of the Panchayats in the metropolitan area in proportion to the ratio between population of the municipal bodies and of the panchayats in that area.

Every Metropolitan Planning Committee has to, in preparing the draft development plan, have regard for the plans prepared by the municipal bodies and the Panchayats in the metropolitan area and also to the matters of common interest between the municipal bodies and the Panchayats. The chairperson of every Metropolitan Planning Committee forwards the development plan to the Government of the State.

The 12th Finance Commission had recommended a sum of Rs. 20000 crore (2005-10) for the PRIs. out of which Rs. 18,294.08 crore as on February 28, 2010 was released (See India — 2011).

## **25. PUBLIC POLICY**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

For resolving the varied problems and meeting the demands of the people, the government, whatever their forms, make numerous policies, Such policies, as are formulated and implemented by the governments, are called public policies. Thomas R. Dye defines public policies as "whatever the governments choose to do or not to do." According to Richard Rose, "public policy is a course or pattern of activity, and not the government's decision." Carl Friedrich says that public policy "is a proposed course of action of - - - a government within a given environment providing opportunities which the policy is proposed to utilize - - - in an effort to reach a goal or realize an objective or purpose." What these mean is that the public policies are not goals, but are goal-oriented : these are formulated and implemented in order to attain the objectives which the government has in view; policies are not as much decisions of the government as they are programmes; it is not as much the government's collective action as they are a pattern or course of activity. Public policy is not a decision, for all the decisions taken can not be described as matters of policy : policy is a strategy and a means while the decision is an end in itself; decisions lead to the formulation of policies; decisions are what policies aim at or hope to achieve; policies are instruments which help lead to goals or the decisions as decided; policies lead to decisions, they are not decisions as such.

#### **25.1 Public Policy: Types**

Public policies are of various **types** such as substantive, regulatory, distributive, redistributive, capitalistic. Policies are **substantive** when they deal with general welfare, development; programmes such as the provision of education, employment, law and order. Such policies are wide enough to cover the whole area of operation. Policies are regulatory when they are concerned with the regulation of trade, business, safety measures, public utilities. Such type of regulation is done by independent organization that work on behalf of the government. In India, we have Life Insurance Corporation, Reserve Bank of India, Hindustan Steel, State Electricity Boards, State Transport Corporation and the like. These do regulatory functions. Policies are distributive when they are meant for specific



## Spardha Mithra coaching Centre

### Indian Polity and Governance

segments of society. Such policies include public assistance and welfare programmes. Examples : adult education programme. food relief, social insurance. vaccination camps etc. etc. Policies are redistributive when they are concerned with the rearrangement of policies which aim at social and economic changes. When certain welfare services are disproportionately distributed among certain sections of people in the society and if the attempts are made to rectify the wrong, they are called the redistributive policies. Capitalistic policies are financial subsidies given by the Union government to the state and local governments.

#### **25.2 Public Policy :**

Stages Public policy passes through numerous stages: The first stage in the life of public policy is policy formulation. It is the stage when the demands of the system get converted into policies. Through numerous ways, the attention of the government is drawn towards the problems which need its consideration : people's representatives in the Parliament and state assemblies raise issues and demands; political parties and pressure groups seek to articulate people's demands; mass media too help attract government's attention on people's problems. Once the issues are raised and the problems are identified, the process of policy formulation begins to take shape: the government's response in the form of its goals, and objectives comes to the fore; a perspective is determined to generate broad goals of a policy and the detailed pattern is drawn up accordingly: the goals are set, the policy is devised at the various levels of the government and in the process, the choices are made about the objectives strategies and instruments of the policy concerned. All skills and competence get at work while the policy is formulated. The next stage in public policy process is **policy education**. At this stage, the government, through various channels of mass-media attempts to make the masses aware of the formulated policies. It is important that the people are made aware about the objectives of the policies, the benefits which can be derived from them, the implementation machinery chosen for the policies, the change that could be brought through the policies, the nature of their effect on the people.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

agencies and institutions involved in their **implementation**, monitoring and evaluation etc. This type of education goes a long way in developing the right kind of attitudes of the people towards the government which, ultimately, leads to people's participation in policy formulation and public support for government's policies. After this, comes the stage of implementation. It is the stage when policies are systematically executed by different administrative agencies at the central, state and local levels. To ascertain the impact of policies, it is important that the implementation process be kept under scrutiny. that the expenditure does not exceed the resources available and that the policies are positively affecting those for whom they are devised. Proper monitoring of policy implementation is to be made. Implementors be given sufficient autonomy and flexibility so to carry out the task of implementation. They be given adequate powers. Bureaucracy should be equally skilled and professional so to give the policies effective implementation. Lack of people's participation often leads to the breakdown of the implementation process Policy evolution is the final stage of policy process. It is essential that a systematic and effective policy evaluation system exists so to determine the success or failure of a policy : there has to be proper policy monitoring; effective implementation machinery functions adequately; agencies. people. officials. institutions involved in implementation are not corrupt, inefficient and ineffective; duration targets are properly met. Policy evaluation has to be both qualitative as well as quantitative. Qualitative implementation implies when it is determined whether the policy has been. on the whole, beneficial or not; whether the objectives formulated have been in consonance with the changing scenario or not; whether the policy will be viable in the long run and whether it will be able to meet the rising expectations of the people or not. Quantitatively. implementation implies that whether stated objectives of the policies have been specifically achieved or not.

### **25.3 Public Policy : Objectives and Institutions of Policy-Making**

Public policy making, in India. under its peculiar conditions following the termination of the British colonial rule, had its definite basic objectives as

## Spardha Mithra coaching Centre

### Indian Polity and Governance

dictated by the Constitution of India itself (see the Preamble, The Fundamental Rights, the Directive Principles of State Policies, and the other provisions of the Constitution). In the context of these objectives, the policies have been framed and formulated. Some of these objectives, among others, include : (i) elimination of poverty, (ii) elimination of illiteracy: (iii) initiation of social justice measures: (iv) reduction of disparities in income and wealth, (v) even distribution of economic power, (vi) assistance to be given to the weaker sections of society, (vii) resisting inflationary measures; (viii) utilization of all types of resources (both material and man-power) to the fullest possible. (ix) boosting industrial productivity. (x) attaining self-sufficiency in basic needs of shelter. clothing and health for all, (xi) augmentation of agricultural production. (xii) self-reliance in economy and technology. (xiii) developing the transport system. (xiv) promoting policies for controlling the growth of population, (xv) seeking over-all development. These objectives have to be sought so to attain the ultimate goals of self-reliance, economic growth. industrialization. modernization and social justice. The institutions of the government such as the Parliament and the state assemblies, the executive such as the governmental machinery both at the central level and the state level, and the judiciary (the Supreme Court and the High Courts) play an important role in policy making and policy implementation. especially in the developing nations. The non-governmental agencies like the political parties, the pressure groups. the civil society organizations, the citizens also play a crucial role in policy making. The role of the culture in the formulation of policies is no less important. Culture is expressed in norms, values, attitudes, beliefs, traditions, and customs which prevail in the society at a given point of time and it can not be set aside when the policy makers formulate policies. Likewise, ethics and values. too can not be ignored while policies are being formulated. No government can afford to ignore values such as individual freedom, order, justice, equality, and the like when policies are framed. All these have a bearing on the policy process. The role of mass media and social movements in helping the formulation of public policies by the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

government is, indeed, important: while the former highlight the issues relating to a policy and the latter. generate momentum for its formulation.

#### **25.4(i) National Policy on Agriculture (2000)**

Agriculture is a tradition in India. It is a way of life. It is central to all strategies for planned socio-economic development of the country. The rapid growth of agriculture is essential not only for self-reliance at the national level, but also is an assurance for food security. The millions of our farmers and the farm-workers are the backbone of our economy who not only ensure us food for our billion people. they also provide raw-material for our expanding industry. The National Policy on Agriculture seeks to actualize the vast untapped growth potential of Indian agriculture. Strengthening rural infrastructure to support faster agricultural development. promotion of value addition, accelerating the growth of agri-business, creating employment in rural areas, securing a fair standard of living for the farmers and agricultural workers and their families, discouraging the migration to urban areas and facing the challenges arising out of economic liberalization and globalization are some of its tasks, which, over the next two decades, it aims to attain. The salient features of the agricultural policy (2000) are:

1. over 5 per cent annual growth rate aimed;
2. greater private sector participation through contract farming;
3. protection for farmers;
4. national agricultural insurance scheme to be launched;
5. dismantling of restrictions on movement of agricultural commodities throughout the country;
6. rational utilization of country's water resources for optimum use of irrigation potential;
7. high priority to development of animal husbandry, poul-try, dairy and aquaculture;
8. capital inflow and assured markets for crop produc-tion;
9. exemption from payment of capital gains and tax on compulsory acquisition of agricultural land;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

10. minimize fluctuations in commodity prices;
11. continuous monitoring of international prices;
12. plant varieties to be protected through legislation;
13. adequate and timely supply of quality inputs to farm-ers;
14. high priority to rural electrification; and
15. setting up of agro-processing units and creation of off-farm employment in rural areas. For promoting the above policy, the institutional reforms sought to incorporate would include:
  - consolidation of holdings all over the country on the pattern of north-western states;
  - redistribution of ceiling surplus lands and waste lands among the landless farmers. unemployed youth with initial start-up capital;
  - tenancy reforms to recognize the rights of the tenants and share croppers;
  - development of lease markets for increasing the size of holdings by making legal provisions for giving private lands on lease for cultivation and agri-business;
  - updating and improvement of land records, computeriza-tion and issue of land pass-books to the farmers and
  - recognition of women's rights in land.

#### **25.4(ii) National Policy on Education (1986)**

The education is a unique investment in the present and the future. The National Policy on Education (1986) had its peculiar **features** which can be summed up as follows:

1. All students irrespective of caste, creed, location or sex, should have access to education of a comparable quality. To achieve this, the Government will initiate appropriately funded programmes.
2. The policy envisages a common educational structure. The 10+2+3 structure will be accepted in all parts of the country.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

3. The policy will be based on a national curricular frame-work which contains a common core along with other components that are flexible. The common core will include the history of India's freedom movement, the constitutional obligations and other content essential to nurture national identity. These elements will cut across subject areas and will be designed to promote values such as India's common cultural heritage, egalitarianism, democracy and secularism, equality of the sexes, protection of the environment, removal of social barriers, observance of the small family norms and inculcation of the scientific temper. All educational programmes will be carried on in strict conformity with secular values.

4. India has always worked for peace and understanding between nations, treating the whole world as one family. True to this tradition, education has to strengthen this world view and motivate the younger generations for international co-operation and peaceful co-existence.

5. To promote equality, it will be necessary to provide for equal opportunity to all not only in access, but also in the conditions for success. Besides, awareness of the inherent equality of all will be created through the core curriculum. The purpose is to remove prejudices and complexes transmitted through the social environment and the accident of birth.

6. Minimum levels of learning will be laid down for each stage of education. Steps will also be taken to foster among students an understanding of the diverse cultural and social systems of the people living in different part of the country.

7. In higher education in general, and technical education in particular, steps will be taken to facilitate inter-regional mobility by providing equal access to every Indian of requisite merit, regardless of his origins. The universal character of universities and other institutions of higher education is to be underscored.

8. In the areas of research and development, and education in science and technology, special measures will be taken to establish network

## Spardha Mithra coaching Centre

### Indian Polity and Governance

arrangements between different institutions in the country to pool their resources and participate in projects of national importance.

. The nation as a whole will assume the responsibility of providing resource support for implementing pro-programmes of educational transformation, reducing dis-parities, universalisation of elementary education, adult literacy, scientific and technological research, etc.

10. Life-long education is a cherished goal of the educational process. This presupposes universal literacy. Opportunities will be provided to the youth, housewives, agricultural and industrial workers and professionals to continue the education of their choice, at the pace suited to them. The future thrust will be in the direction of open and distance learning.

11. Education will be used as an agent of basic change in the status of woman. In order to neutralize the accumulated distortions of the past, there will be a well-conceived edge in favour of women. This policy will play a positive, interventionist role in the empowerment of women.

12. The removal of women's illiteracy and obstacles inhibiting their access to, and retention in, elementary education will receive overriding priority, through provision of special support services, setting of time targets and effective monitoring. Major emphasis will be laid on women's participation in vocational, technical and professional education at different levels.

13. The central focus in the Scheduled Castes (SC) educational development is their equalization with the non-SC population at all stages and levels of education, in all areas and in all the four dimensions — rural male, rural female, urban male and urban female. The measures contemplated for this purpose include: (i) Incentives to indigent families to send their children to school regularly till they reach the age of

14; (ii) Pre-matric scholarship scheme for children of families engaged in occupations such as scavenging, flaying and tanning to be made applicable from Class I onwards. All children of such families, regardless of incomes, will be covered by this scheme and time-bound programmes targeted on

## Spardha Mithra coaching Centre

### Indian Polity and Governance

them will be undertaken; Constant micro-planning and verification to ensure that the enrolment, retention and successful completion of courses by SC students do not fall at any stage, and provision of remedial courses to improve their prospects for further education and employment. (iv) Recruitment of teachers from Schedules Castes; (v) Provision of facilities for SC students in students' hostels at district headquarters, according to a phased programme; (vi) Location of school building, Balwadis and Adult Education Centres in such a way as to facilitate full participation of the Scheduled Castes; (vii) The utilisation of Jawahar Rozgar Yojana resources so as to make substantial educational facilities available to the Scheduled Castes. and 14. The following measures will be taken urgently to bring the Scheduled Tribe on par with others:- (i) Priority will be accorded to opening primary schools in tribal areas. The construction of school buildings will be undertaken in these areas on a priority basis under the normal funds for educational as well as under the Jawahar Rozgar Yojana, Tribal Welfare Schemes, etc. (ii) The socio-cultural milieu of the STs, has its distinctive characteristics including, in many cases, their own spoken languages. This underlines the need to develop the curricula and devise instructional materials in tribal languages at the initial stages, with arrangements for switching over to the regional language. (iii) Educated and promising Scheduled Tribe youths will be encouraged and trained to take up teaching in tribal areas. (iv) Residential schools, including Ashram Schools, will be established on a large scale. (v) Incentive schemes will be formulated for the Scheduled Tribes, keeping in view their special needs and life styles. Scholarships for higher education will emphasise technical, professional and para-professional courses. Special remedial courses and other programmes to remove psycho-social impediments will be provided to improve their performance in various courses (vi) Anganwadis, Non-formal and Adult Education Centres will be opened on a priority basis in areas predominantly inhabited by the Scheduled Tribes. (vii) The curriculum at all stages of education will be designed to create an awareness of the rich cultural identity of the tribal people as also of their enormous creative talent.



## Spardha Mithra coaching Centre

### Indian Polity and Governance

15. Suitable incentives will be provided to all educationally backward sections of society, particularly in the rural areas. Hill and desert districts, remote and inaccessible areas and islands will be provided adequate institutional infrastructure.

16. Some minority groups are educationally deprived or backward. Greater attention will be paid to the education of these groups in the interests of equality and social justice. This will naturally include the constitutional guarantees given to them to establish and administer their own educational institutions, and protection to their languages and culture.

17. The objective should be to integrate the physically and mentally handicapped with the general community as equal partners. to prepare them for normal growth and to enable them to face life with courage and confidence. The following measures will be taken in this regard:

- (i) Wherever it is feasible, the education of children with motor handicaps and other mild handicaps will be common with that of others.
- (ii) Special schools with hostels will be provided, as far as possible at district headquarters, for the severely handicapped children.
- (iii) Adequate arrangements will be made to give vocational training to the disabled.
- (iv) Teachers' training programmes will be reoriented, in particular for teachers of primary classes, to deal with the special difficulties of the handicapped children: and
- (v) Voluntary effort for the education of the disabled will be encouraged in very possible manner.

18. The existing schism between the formal system of education and the country's rich and varied cultural traditions need to be bridged. The preoccupation with modern technologies can not be allowed to sever our new generations from the roots in India's history and culture. Deculturation, dehumanisation and alienation must be avoided at all costs.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

Education can and must bring about the fine synthesis between change-oriented technologies and the country's continuity of cultural tradition.

19. Linkages will be established between the university system and institutions of higher learning in art, archaeology, oriental studies, etc. Due attention will also be paid to the specialized disciplines of Fine Arts, Museology, Folklore, etc. Teaching, training and research in these disciplines will be strengthened so as to replenish specialised manpower in them.

20. The growing concern over the erosion of essential values and an increasing cynicism in society has brought to focus the need for readjustments in the curriculum in order to make education a forceful tool for the cultivation of social and moral values. In line with the commitment of augmenting resources of education, the allocation for education has, over the years, increased significantly. The Plan outlay on education was rupees 151 crore in the first five year plan. The eleventh five year plan (2007-12) is rupees 269873 crore. The approved annual plan outlay (2009-10) is rupees 9600 crore for higher education and rupees 26800 crore for school education.

The Sarva Shiksha Abhiyan (SSA) launched in 2001, is one of the major programmes for universalisation of elementary education. Its overall goals include universal access and retention, bridging gender and social category gaps in elementary education.

The Constitution (86th Amendment) Act, 2002, inserted Article 21 A in the Constitution which provides for free and compulsory education to all the children in the age groups of six to fourteen years as a fundamental right.

#### **25.4(iii) National Employment Policy (Draft - 2008)**

Employment is the major source of livelihood and self-fulfillment for most men and women. Men and women, seeking work, must not only seek the goal of decent and remunerative work but also, in the process of employment, enjoy conditions of equity, security and human dignity.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

1. The objective of the National Employment Policy (NEP) is to provide a framework towards the goal of achieving remunerative and decent employment for all women and men in the labour force. More specifically it aims at: (a) accelerating employment growth in the organized sector. and (b) improving the quality of jobs (in terms of productivity, earnings, and protection of workers) in the unorganized sector.
2. The National Policy seeks to ensure that not only more jobs, but jobs that are decent and those that ensure minimum wages, safe working conditions and basic social security.
3. The NEP needs to be based on the consideration that development must be regionally balanced and environmentally sustainable.
4. A range of social considerations constrain the utilization of productive potential of large sections of the workforce, such as women and some vulnerable groups. Supportive structures and an enabling environment need to be created to ensure that not only productive employment opportunities increase but also there is an increase in participation of these groups in the mainstream economic and social activities.
5. In the context of the slow growth of employment in the formal sector, and a very high proportion of the labour force being engaged in the informal economy the proposed National Policy should have a heightened focus on the informal segment and provide for strategies specifically needed to ensure quality employment growth in the informal sector.
6. Self-employment continues to be the dominant form of work in the Indian economy. For large proportion of the selfemployed, particularly women engaged in petty production, trade and home-based work, it is a mechanism for coping with poverty. The Employment Policy will, therefore, require not only to focus on creation of wage and salary-based employment, but will also give equal emphasis to the measures to strengthen the capabilities of the self-employed to improve their earnings and turn their work from a survival strategy into productive employment with rising income levels.

## Spardha Mithra coaching Centre

### Indian Polity and Governance

7. As long as there is a deficit of income earning opportunities, special employment programmes such as the National Rural Employment Guarantee Programme would need to continue. There is indeed scope for such programmes to create productive employment rather than remain as fall-back options, with proper planning of works, technical support and convergence of rural infrastructure works wherever feasible.

8. The role of state governments is critical in creating a facilitating environment for accelerating the growth of quality employment and implementing the policy in all its aspects. For employment generation, the government has launched numerous schemes such as Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), Swarnajayanti Gram Swarajgar Yojna and the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) and the like.

#### **25.4(iv) National Policy on Safety, Health and Environment at Workplace (2009)**

The Government firmly believes that building and maintaining national preventive safety and health culture is the need of the hour. With a view to develop such a culture and to improve the safety, health and environment at work place. the government's goals are:

1. providing a statutory framework on Occupational Safety and Health in respect of all sectors of industrial activities including the construction sector, designing suitable control systems of compliance, enforcement and incentives for better compliance;
2. providing administrative and technical support services;
3. providing a system of incentives to employers and employees to achieve higher health and safety standards;
4. providing for a system of non-financial incentives for improvement in safety and health;

## Spardha Mithra coaching Centre

### Indian Polity and Governance

5. establishing and developing the research and development capability in emerging areas of risk and providing for effective control measures;
6. focusing on prevention strategies and monitoring performance through improved data collection system on work related injuries and diseases;
7. developing and providing required technical manpower and knowledge in the areas of safety, health and environment at workplaces in different sectors;
8. promoting inclusion of safety, health and environment, improvement at workplaces as an important component in other relevant national policy documents; and
9. including safety and occupational health as an integral part of every operation.

The policy seeks to bring the national objectives into focus as a step towards improvement in safety, health and environment at workplace. Its objectives are to achieve:-

- (a) continuous reduction in the incidence of work related injuries, fatalities, diseases, disasters and loss of national assets;
- (b) improved coverage of work related injuries, fatalities and diseases and provide for a more comprehensive data base for facilitating better performance and monitoring;
- (c) continuous enhancement of community awareness regarding safety, health and environment at workplace related areas;
- (d) continually increasing community expectation of work-place health and safety standards; and
- (e) improving safety, health and environment at workplace by creation of "green jobs" contributing to sustainable enterprise development.

The main features of the above policy are:

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

- (i) It recognizes safe and healthy working environment as a fundamental human right.
- (ii) It aims at enhancing the well-being of the employees and the society at large by eliminating work related injuries, diseases, etc.
- (iii) It enumerates the goals to be achieved and brings into focus the objective of continuous reduction in the incidence of work related injuries and diseases.
- (iv) It describes the action programme with nine key strategies i.e. enforcement, development of national standard, compliance, awareness, research and development, skills development, data collection, practical guidance and incentives.
- (v) It also provides for regular review at least once in five years.

It may be remembered that the child labour is prohibited under the Constitution and the law. The National Child Labour Project (1988) seeks to rehabilitate working children in certain notified districts while the attempts are made to provide education to them. Women have been given opportunities of employment and that the Equal Remuneration Act (1976) assures the gender equality in matters of recruitment and service conditions. The bonded labour has been abolished in the country.

**25.4(v) National Environment Policy (2006)**

The major objectives of the National Environment Policy (2006) may be stated as under:

1. to protect and conserve critical ecological system and resources, and invaluable natural and man-made heritage, which are essential for life-support, livelihoods, economic growth, and a broad conception of human well-being;
2. to ensure equitable access to environmental resources and quality for all sections of society, and in particular, to ensure that poor communities,

## Spardha Mithra coaching Centre

### Indian Polity and Governance

which are most dependent on environmental resources for their livelihoods, are assured secure access to these resources;

3. to ensure judicious use of environmental resources to meet the needs and aspirations of the present and future generations;

4. to integrate environmental concerns into policies, plans, programmes and projects for economic and social development;

5. to ensure efficient use of environment resources in the sense of reduction in their use per unit of economic output, to minimize adverse environmental impacts;

6. to apply the principles of good governance (transparency, rationality, accountability, reduction in time and costs, participation and regulatory independence) to the management and regulation of use of environmental resources; and

7. to ensure higher resource flows, comprising finance, technology, management skills, traditional knowledge, and social capital for environmental conservation through mutually beneficial multistakeholder partnerships between local communities, public agencies, the academic and research community investors, and multilateral and bilateral development partners.

The environmental policy evolves from the recognition that only such development is sustainable which respects ecological constraints, and the imperatives of justice. The objectives as stated can be realized through principles followed by the government and the people. Among these principles, emphases may be laid on, (a) peoples' entitlement to a healthy and productive life in harmony with nature; (b) peoples' right to development within the framework of development and environmental needs of the present and future generations; (c) protection of environment as an integral part of the developmental process; (d) environmental resources have not to be damaged; and (e) economic efficiency would be sought to be realistic in environmental conservation.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

**25.4(vi) National Health Policy (2002)**

The major thrust on National Health Policy (2002) is on the following:-

1. to achieve an acceptable standard of good health amongst the general population of the country, especially for the poor and the underprivileged;
2. to increase access to the decentralized public health system by establishing new infrastructure in deficient areas;
3. to upgrade the infrastructure in the existing institutions;
4. to ensure a more equitable access to health services across the social and geographical expanse of the country;
5. to increase the aggregate public health investment through a substantially increased contribution by the Central Government;
6. to emphasise on preventive and first-line curative initiative at the primary health level;
7. to lay emphasis on the rational use of drugs;
8. to increase access on the tried and tested system of traditional medicine;
9. to improve health care, public health, sanitation, clean drinking water, access to proper food; and
10. to provide special assistance to the health of the marginal groups, especially the scheduled castes, the scheduled tribes, the older persons, the disabled, women and children.

**25.4(vii) Industrial Policy since 1991**

Since 1991, industrial policy measures and procedural simplifications have been reviewed on an ongoing basis, Presently, there are only five industries (alcoholic drinks, cigars and cigarettes, defence equipments industrial explosives hazardous chemicals) which require compulsory licensing. Similarly, there are only two industries (atomic energy and railway



## Spardha Mithra coaching Centre

### Indian Polity and Governance

transport) reserved for the public sector. Some of the important policy measures initiated since 1991 are set out below:

1. Since 1991, promotion of foreign direct investment has been an integral part of India's economic policy. The Government has ensured a liberal and transparent foreign investment regime where most activities are opened to foreign investment on automatic route without any limit on the extent of foreign ownership. FDI up to 100 per cent has also been allowed under automatic route for most manufacturing activities in Special Economic Zones (SEZs). More recently, in 2004, the FDI limits were raised in the private banking sector (up to 74 per cent), oil exploration (up to 100 per cent), petroleum product marketing (up to 100 per cent), petroleum product pipelines (up to 100 per cent), natural gas and LNG pipelines (up to 100 per cent).

2. Since April 2001, the Government has adopted a policy of dereservation and has pruned the list of items reserved for Small Scale Industries sector gradually from 821 items as at end March 1999 to 506 items as on April 6, 2005. Further, the Union Budget 2005-06 had proposed to dereserve 108 items which were identified by Ministry of Small Scale Industries. Presently, there are 41 reserved items which are allowed investment limit up to Rs. 50 million instead of present limit of Rs. 10 million applicable for other small scale units.

3. Equity participation up to 24 per cent of the total share-holding in small scale units by other industrial undertakings has been allowed. The objective therein has been to enable the small sector to access the capital market and encourage modernization, technological upgradation, ancillarisation, sub-contracting etc. etc.

4. Under the framework provided by the Competition Act 2002, the Competition Commission of India was set up in 2003 so as to prevent practices having adverse impact on competition in markets.

5. In an effort to mitigate regional imbalances, the Government announced a new North-East Industrial Policy in December 1997 for promoting

## Spardha Mithra coaching Centre

### Indian Polity and Governance

industrialization in the North-Eastern region. This policy is applicable for the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. The Policy has provided various concessions to industrial units in the North Eastern Region, e.g., development of industrial infrastructure, subsidies under various schemes, excise and income-tax exemption for a period of 10 years, etc. North Eastern Development Finance Corporation Ltd. has been designated as the nodal disbursing agency under the Scheme.

6. The focus of disinvestment process of PSUs had shifted from sale of minority stakes to strategic sales. Up to December 2004, PSUs have been divested to an extent of Rs. 478 billion.

7. Apart from general policy measures, some industry specific measures have been initiated. For instance, Electricity Act 2003 has been enacted which envisaged to delicense power generation and permit captive power plants. It is also intended to facilitate private sector participations in transmissions or/and provide open access to grid sector. Various policy measures have facilitated increased private sector participation in key infrastructure sectors such as, telecommunication, roads and ports. Foreign equity participation up to 100 per cent has been allowed in construction and maintenance of roads and bridges. MRTP provisions have been relaxed to encourage private sector financing by large firms in the highway sector.

#### **25.4(viii) India's Nuclear Policy**

India has a firm nuclear policy based on the peaceful utilization of its atomic power. It remains unchanged in spite of changes of government:

1. All nuclear weapons throughout the world must be eliminated for world peace;
2. India will not produce any nuclear weapons;
3. India may not have nuclear explosions even for peaceful purposes unless such explosions are absolutely necessary;

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

4. India is not prepared to open its nuclear plants for inter-national inspection;
5. Minimum deterrence:
6. No first use and non-use of nuclear weapons against non-nuclear states;
7. A moratorium on nuclear tests and accession to the Comprehensive Test Ban Treaty;
8. A defensive nuclear programme; a matter of self-defence and not of war.

The Atomic Energy Commission (AEC) formed on 10 August, 1948, is the apex body for formulating the policy for all atomic energy programmes. whereas, the Department of Atomic Energy (DAE) set up in 1954. is the executive agency for implementing the atomic energy programme.

**25.4(ix) National Policy on Older Persons (1999)**

The chief features of the National Policy on Older Persons (1999) can be summed up as follows:

1. The national Policy seeks to assure older persons that their concerns are national concerns and that they will not live unprotected, ignored or marginalized. The goal of the National Policy is the well-being of older persons. It aims to strengthen their legitimate place in society and help older persons to live the last phase of their life with purpose, dignity and peace.
2. The policy visualizes that the state will extend support for financial security, health care, shelter, welfare and other needs of older persons. provide protection against abuse and exploitation, make available opportunities for development of the potential of older persons. seek their participation, and provide services so that they can improve the quality of their lives. The Policy is based on some broad principles.
3. The Policy recognizes the need for affirmative action in favour of the elderly. It has to be ensured that the rights of older persons are not violated

## Spardha Mithra coaching Centre

### Indian Polity and Governance

and they get opportunities and equitable share in development benefits. different sectors of development, programmes and administrative actions will reflect sensitivity in older persons living in rural areas. Special attention will be necessary to older females so that they do not become victims of neglect and discrimination on account of gender, widowhood and age.

4. The Policy views the life cycle as a continuum, of which post-60 phase of life is an integral part. It does not view age 60 as the cut off point for beginning a life of dependency. It considers 60+ as a phase when the individual should have the choices and the opportunities to lead an active, creative, productive and satisfying life. An important thrust is therefore, on active and productive involvement of older persons and not just their care.

5. The Policy values an age-integrated society. It will endeavour to strengthen integration between generations, facilitate two way flows and interactions, and strengthen bonds between the young and the old. It believes in the development of a social support system, informal as well as formal, so that the capacity of families to take care of older persons is strengthened and they can continue to live in their family.

6. The Policy recognizes that the older persons, too, are a resource. They render useful services in the family and outside. They are not just consumers of goods and services but also their producers. Opportunities and facilities need to be provided so that they can continue to contribute more effectively to the family, the community and society.

7. The Policy firmly believes in the empowerment of older persons so that they can acquire better control over their lives and participate in decision making on matters which affect them as well as on other issues as equal partners in the development process. The decision-making process will seek to involve them to a much large extent specially since they constitute 12 percent of the electorate, a proportion which will rise in the coming years.

8. The Policy recognizes that larger budgetary allocations from the State will be needed and the rural and urban poor will be given special attention. However, it is neither feasible nor desirable for the State alone to attain the

## Spardha Mithra coaching Centre

### Indian Polity and Governance

objectives of the National Policy. Individuals, families, communities and institutions of civil society have to join hands as partners.

9. The Policy emphasizes the need for expansion of social and community services for older persons. particularly women, and enhance their accessibility and use by re-moving socio-cultural, economic and physical barriers and making the services client oriented and user friendly. Special efforts will be made to ensure that rural areas, where more than three-fourths of the older population lives, are adequately covered. In the following fields, the older persons shall have all facilities:

#### **(a) Financial Security**

(i) The old age pension scheme to eventually cover all eligible older persons.

(ii) Pensions scheme to be broadened to include both public and private sectors.

(iii) Tax exemption for medical and nursing care, trans- portation and support service for the old or the son or daughter with whom they are staying.

(iv) The public distribution system to reach out to cover all 60+ living below the poverty line.

#### **(b) Health Care and Nutrition**

(i) Subsidy for the health care needs of the elderly poor and graded system of user charges for others.

(ii) Providing public health services and health insur-ance to ensure preventive, curative, restorative and rehabilitative needs of the older persons.

Indian Polity and Governance 133

(iii) Tax reliefs. grants, land grant at concessional rates of NGOs and private hospitals to provide economical and specialized care for the older persons.

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

(iv) Setting up geriatrics wards and running of training and orientation programmes for geriatric care.

(v) Expansion of mental health services, counseling facilities for the elderly having mental health problems.

**(c) Shelter**

(i) Earmarking 10% of the houses in private & government housing schemes and easy access to loans.

(ii) Layout of housing colonies to be sensitive to the needs of the older persons .

(iii) Quick disposal of cases of property-transfer. mutation, property-tax etc.

**(d) Welfare**

(i) Identify the more vulnerable among the older persons such as poor, infirm and those without family support. Institutional care to be only the last resort.

(ii) Assistance to voluntary organizations by way of grants in aid for construction/maintenance of old-age home, daycare centers, multi-service citizens center, out reach services supply of disability related aids and appliances etc.

(iii) Setting up welfare fund for older persons with support from corporate sector, trust, charities, individual donors and others

**(e) Basic facilities**

Providing identity cards, fare concession, preference in reservation of seats, earmarking of seats in local public transport, modifications in designs of public transport, priority in allotting gas and telephone connections, etc.

**25.4(x) National Policy for Women (2001)**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

The Ministry of Human Resource Development. Department of Women & Child Development Government of India has circulated the National Policy for the Empowerment of Women 2001 for implementation. The Government of India has prescribed some goals and objectives as under:-The goal of this Policy is to bring about the advancement, development and empowerment of women. The Policy will be widely disseminated so as to encourage active participation of all stakeholders for achieving its goals. Specifically, the objectives of this Policy include:

1. Creating an environment through positive economic and social policies for full development of women to enable them to realize their full potential:
2. The de-jure and de-facto enjoyment of all human rights and fundamental freedoms by women on equal basis with men in all spheres -- political, economic, social, cultural and civil:
3. Equal access to participation and decision-making of women in social, political and economic life of the nation:
4. Equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public office etc.;
5. Strengthening legal systems aimed at elimination of all forms of discrimination against women;
6. Changing societal attitudes and community practices by active participation and involvement of both men and women;
7. Mainstreaming a gender perspective in the development process;
8. Elimination of discrimination and all forms of violence against women and the girl child; and
9. Building and strengthening partnerships with civil society, particularly women's organizations.

#### **25.4(xi) India's Poverty Alleviation Programmes**

## Spardha Mithra coaching Centre

### Indian Polity and Governance

At the turn of the century, around 260 million people in India who had no income to buy food which defines the poverty line. Of these 75% lived in the rural areas. India has 22% of the world's poor.

The antipoverty programmes have been launched. Some of them can be summed up as follows:

**(a) Swaranjayanti Gram Swarozgar Yojana (SGSY) :** The below poverty line families form the basis for assistance under SGSY, Safeguards have been provided to vulnerable sections by reserving benefits for Scheduled Castes/Scheduled Tribes, women and disabled persons. Under the programme, emphasis is also laid on training, capacity building and provision of rural infrastructure.

**(b) Sampoorna Grameen Rozgar Yojna (SGRY) :** The SGRY is open to all rural poor who are in need of wage employment and desire to do manual and unskilled work in an around the village/habitat. The programme is self-targeting in nature. While providing wage employment, preference is given to agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers, women, members of Scheduled Castes/Scheduled Tribes, parents of child labour withdrawn from hazardous occupations. parents of handicapped children of adults with handicapped parents. The programme is implemented through the Panchayati Raj Institutions (PRIs).

**(c) National Food for Work Programme :** The National Food for Work Programme (NFFWP) was launched on 14 November 2004 in 150 identified backward districts where there is a high demand for wage employment in these areas The NFFWP is expected to

- Ensure a minimum level of employment and incomes to the poor;
- Give the poor an opportunity to develop their collective strength, improve their economic position, and reduce their vulnerability;
- Discourage migration;



## Spardha Mithra coaching Centre

### Indian Polity and Governance

- Provide access to health, education and welfare services in the village itself; and
- Expedite the construction of environment-friendly infrastructure, works which enhance productivity levels (both farm and off farm) and provide a basis for further promoting economic activities in the region.

**(d) Rural Housing — Indira Awaas Yojna (IAY) :** The Indira Awaas Yojana (IAY) was launched as the major scheme for construction of houses to be given to the poor, free of cost at the unit cost of Rs. 25,000/- in plain areas and Rs. 27,500/- in the hilly/difficult areas. An additional component has been added, to the scheme for conversion of unserviceable kutch houses to semi pucca houses. A Credit-cum-Subsidy Scheme for rural housing was also launched to target rural families having annual income up to Rs. 32,000/-. The loans under this scheme are disbursed by the commercial banks and housing finance institutions.

**(e) Swarnajayanti Shahari Rozgar Yojana (SJSRY) :** The Swarna Jayanti Shahari Rozgar Yojana (SJSRY) is the main poverty alleviation programme in the urban areas. The SJSRY seeks to provide gainful employment to the urban unemployed and under-employed poor by encouraging the setting up of self-employment ventures or provision of wage employment. The two schemes under SJSRY are the Urban Self Employment Programme (USEP) and the Urban Wage Employment Programme (UWEP). The UWEP includes a component for assistance to groups of urban poor women under the title "Scheme for Development of Women and Children in Urban Areas" (DWCUA).

#### **25.4(xii) National Youth Policy (2003)**

The first National Youth Policy was formulated in 1988. A need was felt to revise the policy as a result of rapid socio-economic transformation in the country. The New Youth Policy (2003) was formulated by the Ministry of Youth Affairs and Sports. The four thrust areas recognised by the Policy are: (i) Youth Empowerment; (ii) Gender Justice; (iii) Inter-Sectoral approach; and (iv) Information and Research network. As per the Youth Policy, the age

**Spardha Mithra coaching Centre**  
**Indian Polity and Governance**

group of the youth is between 13 and 35. The National Youth Policy has the following features:

1. to instill in youth faith for the principles and values enshrined in our Constitution:
2. to develop qualities of citizenship and community service in all sections of society;
3. to promote awareness among the youth, about the Indian history, heritage, arts and composite culture;