

Polity Class 45

12th January, 2024 at 9:00 AM

COMPARISON OF INDIAN FEDERALISM WITH USA (09:13 AM)

- **USA:**
- The US does not follow the list system as is followed in India and Canada.
- Several important Constitutional pronouncements require approval from the Senate on behalf of the state.
- In the US, each of the states has their own constitution along with separate citizenship.
- The states have been provided a very important role in the amendment of the American Constitution.
- Every Constitutional Amendment requires ratification from the States.
- The provisions related to emergency have not been included in the American Constitution but owe their existence to an ordinary law made in 1976.
- **India:**
- Certain subjects have been assigned to the federal government and the rest of them are with the states.
- Indian Constitution has a unitary bias tilting the arrangement of powers towards the Union.
- **Civil Liberties and Fundamental Rights in India and the USA:**
- *The concept of untouchability and Concept of the reservation is not there in the US Constitution.*
- *The USA did not give full civil rights to blacks till the 1960s, provisions related to slavery were deleted in mid 19th century only.*
- *In India, We went for a Universal Adult Franchise immediately after independence while the US Constitution granted voting rights to women in the 1920s only.*
- *In India some of the Fundamental Rights can be suspended during emergency while this is not the case with America.*
- Fundamental rights guaranteeing civil Liberties were included in the American Constitution via Amendment to the Constitution.
- In America, some of the Fundamental Rights are unrestricted in nature and the Constitution does not provide any grounds for limiting them rather these limits are determined by the Courts on a case-to-case basis.
- The US Constitution has adopted the concept of *due process of law* where extensive powers have been given to the Courts to determine the legitimacy of laws made by the legislature and the executive actions.

- India on the other hand, has adopted the concept of *Procedure Established by Law* where the courts have limited powers.
- At the same time, the Courts in India have expanded the scope of *Procedure Established by law*.
- Right to Property continues to be a Fundamental right of the US along with the principles of eminent domain.

COMPARISON OF INDIA WITH BRITAIN (10:08 PM)

- Some of the important features of the British Constitution:
- An unwritten and flexible Constitution as the British Constitution has evolved over a period of time and is not an enacted one.
- The British Constitution has multiple sources including the *Magna Carta (1215)*, Bill of Rights (1689), etc.
- Not only that conventions and judicial pronouncements and judicial decisions play a very important role in the British scheme of things.
- Britain has adopted a unitary set-up with a separate Legislature for Scotland, Wales, and Northern Ireland created as a result of a law made by the Parliament.
- Britain follows the concept of the Parliamentary supremacy and the Supreme Court does not have the power to strike down a law made by the legislature.
- The House of Lords unlike the Rajya Sabha is an unelected chamber of the Parliament with more than 750 members, many of whom are lifetime members.
- Fundamental rights in Britain:
- Britain does not have the concept of a Constitutional guarantee of Fundamental Rights like India and the US but that does not mean that the state can do anything against the rights of the citizens.
- In 1998, the British Parliament enacted the Human Rights Act that gave recognition to the rights of the citizens and placed limitations on the public bodies to not act in contradiction of this law.
- Judiciary in the UK:
- appointments are made by the Crown upon the recommendations of the Judicial Appointment Commission.
- The Supreme Court was established only in the Year 2009 which was a change from the earlier system of members of the House of Lords acting as the highest Court in the UK.
- The Courts do not have the power to review legislation beyond a point due to the concept of the Parliamentary Supremacy nor do they have an equivalent of basic structure doctrine to strike down a law made by the Parliament.

ELECTION COMMISSION OF INDIA (10:52 AM)

- *The conduct of elections should be done by an independent government department.*
- *There should be a dedicated body with dedicated staff.*
- *There should be an independent permanent body and staff on deputation.*
- *Till 1989, the Election Commission of India was a single-member body.*
- *Presidential order of 1989, two other Election Commissioners were appointed to the ECI.*
- *Within a few months, this particular order was revoked.*
- *In 1993, there were 3 members of the Election Commission of India.*
- *The President may also appoint the Regional Commissioners to help with the increased burden of work on ECI.*

PROVISIONS RELATED TO THE SERVICE CONDITIONS OF ECI (11:07 PM)

- *Appointment:*
- *Union Council of Ministers recommends the President for appointment of the CEC and two other Election Commissioners of India.*
- *Tenure:*
- *The tenure of the ECI and other members cannot be more than 6 years or they should not be more than 65 years in age.*
- *Removal:*
- *The Procedure for Removal is as follows:*
- *Removal of CEC should happen in the same manner and on the same ground as a judge of the Supreme Court.*
- *But this protection is provided to only CEC but the removal of other Election Commissioners only upon the advice of the Chief Election Commissioner of India.*

FUNCTIONS PERFORMED BY THE ECI (11:12 AM)

- **1. Preparation of Electoral rolls.**
- **2. Actual conduct of the elections in the country.**
- **3. Preparation and enforcement of Model Code of Conduct.**
- **4. Fixing the limit of election expenditure and auditing the account of expenses submitted by the candidates.**
- **5. Advising the President and the Governor on the Disqualification of the Legislative.**
- *Registered Political Parties include:*
- *Recognised Political Party;*

- *Unrecognised Political Party.*
- *A state-recognised political party can conduct elections throughout the state.*
- *National Party will get Free Air time on All India Radio a free copy of the electoral rolls.*
- 6. They are responsible for the registration as well as giving recognition to the political parties.
- 7. They decide the election symbols to be allocated to the political parties and also decide disputes in this regard.
- Some of the other powers have been defined in the provisions of the Representation of the People Act.
- The Supreme Court in a 1977 judgement held that the election Commission has plenary powers derived from Article 324 irrespective of whether those powers are explicitly mentioned in the Constitution or an ordinary law or not.
- Article 324:
- Superintendence, direction and control of elections to be vested in an Election Commission.—
- The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution 1*** shall be vested in a Commission (referred to in this Constitution as the Election Commission).

ISSUES ASSOCIATED WITH THE FUNCTIONING OF THE ELECTION COMMISSION OF INDIA (11:29 AM)

- The appointment procedure is dominated by the Government therefore raises questions about the independence of the body.
- Even the recent act passed by the Parliament to exclude the CJI from the Selection Committee has been criticised by several experts.
- The other ECs do not enjoy the same kind of protection or security enjoyed by the Chief Election Commissioner.
- The ECI is dependent on the government for its machinery which compromises the independent functioning of the body.
- There are no limitations on the members to seek further appointment from the Government.
- The ECI does not have the power to take disciplinary actions against the political parties by derecognising or deregistering them.
- It has been unsuccessful in keeping a check on the criminalisation of politics and the politicisation of criminals.

MODEL CODE OF CONDUCT (11:45 AM)

- It has the following guidelines:
- Holding public meetings and processions.
- Certain minimum standards of good behavior and conduct of political parties, candidates, and their workers and supporters during the election campaigns.
- It exhorts political parties and candidates to bring their complaints to the notice of the observers appointed by the Election Commission regarding the violation of MCC.
- The guidelines should be followed by the government and the ministers when MCC is in force.
- For example, No new schemes or announcements can be made once the MCC comes into force.
- Even implementation of an uninitiated scheme cannot begin after an MCC comes into force.
- The government cannot publish advertisements highlighting achievements.
- Ministers cannot combine official and election tours.
- The newly introduced Part VIII provides guidelines to the political parties for the promises to be made during the elections.
- In the past, successive ECIs have elicited compliance by public censure and invoking sections of the IPC and the Representation of the Peoples Act.
- T.N. Seshan, the most famous and colourful Chief Election Commissioner of India, came along.
- He was ruthless in implementing the MCC, even cancelling elections on grounds of MCC violations, such as the Kalka by-election in 1993.
- Polling was suspended in a constituency in Madhya Pradesh because a sitting governor campaigned for his son, in violation of the MCC.

CRIMINALISATION OF POLITICS (11:57 AM)

- In recent times, the influence of criminal elements has increased considerably in the politics and electoral processes.
- When a politician uses criminal means or methods or relies upon anti-social elements to increase the chances of winning the elections, it is called as Criminalisation of politics and when such criminals themselves start contesting elections and participating in politics, it can be termed as politicisation of criminals.
- Several factors are responsible for promoting the Criminalisation of politics or vice-versa:
- Lack of internal party democracy where tickets are allocated on the basis of considerations other than ethical and ideological factors.

- As per the ADR report, the winnability of candidates with a criminal background is much higher, therefore, in order to do well in the elections political parties select candidates with a criminal background.
- Money has become an important factor in winning the elections for which political parties have to often rely on criminals.
- The criminal justice system moves at a very slow pace in India encouraging the criminals to enter into politics and thereafter influence the agencies to get verdicts in their favour.
- The general decline in the ethical norms of society and political parties has ended up compromising morals in politics.

WAYS TO ADDRESS CRIMINALISATION OF POLITICS (12:09 PM)

- Evolving norms of internal party democracy to keep a check on the ticket distribution process, etc during the elections.
- Funding of the political parties should be brought under RTI.
- There is an urgent need to introduce reforms in the electoral bond scheme.
- ECI has suggested that the candidate should be disqualified upon framing of charges in serious offences.
- Section 8(3)- of RoPA, 1951 should be amended to reduce the two-year duration to six months.
- Paid news should be made into an electoral offence leading to disqualification.
- Special courts are to be set up to try electoral offences and to speed up the process.
- Some SC judgements on CoP:
 - In 2013, the court struck down the provisions of section 8 (4) of RoPA that made an exception in favour of sitting legislators upon conviction in offences.
 - In 2014, the Court stated that trials involving the sitting legislators should be completed within one year and any delays must be justified with reasons.
 - In 2017, the court directed the government to set up 12 special courts for trials against the legislators.
 - In ADR versus the Union of India, the Supreme Court directed that all the candidates contesting the elections must reveal their criminal antecedents or background while filing the nomination.

The syllabus of polity has been completed in this batch