

Polity Class 38

28th November, 2023 at 9:00 AM

A BRIEF OVERVIEW OF THE PREVIOUS CLASS - (09:17 AM)

FISCAL FEDERALISM - (09:20 AM)

- Fiscal federalism refers to the distribution of fiscal powers between the union and the states in such a manner so that both of them can function autonomously/independently on matters under their jurisdiction in an effective manner.
- Some of the principles of Fiscal Federalism are as follows -
 - a) Existence of resource responsibility parity.
 - b) Elasticity of resources.
 - c) Independence and autonomy to spend the money as per one's priority.
 - d) Vertical and horizontal parity to address the inequitable distribution of resources.
 - e) Aspects of accountability to ensure efficient and proper utilization of funds.

CONCERNS/ISSUES RELATED TO DISCRETIONARY GRANTS IN INDIA - (09:28 AM)

- a) These grants often come with a number of conditions that are found to be unreasonable by the states.
- b) A large portion of Vertical transfers are made through this route therefore sidelining the role of finance commission.
- c) States often complain that they are required to match the proportion of grants but do not have the liberty to decide the priorities.
- d) Grants made under this route are not released on a timely basis therefore delaying the execution of various initiatives by the states.
- e) Often these grants are one-time in nature and recurring expenditure has to be made by the states.

JUDICIARY - (09:37 AM)

- Union Judiciary-
- There is an independent and integrated judiciary in India.
- An Independent Judiciary means that there shall be no interference of the executive and the legislature in the functioning of the judiciary and there shall be no fear or favor in the minds of the judiciary.
- It also means that the functioning of the Judiciary should not be restrained by the other organs of the constitution.
- How was the Independence of the Judiciary ensured?

- a) Appointments are made in consultation with the Judiciary.
- b) Removal of judges by the special majority of the houses.
- c) Salaries are allowances that cannot be decreased to their disadvantage.
- d) No discussion on their conduct in the parliament.
- e) SC can make its own rules for the conduct of its business.
- f) Ban on practice after retirement for judges of the Supreme Court.
- g) Power to punish for its contempt.
- h) Freedom to appoint its staff.

THREATS TO INDEPENDENCE OF JUDICIARY IN INDIA - (09:54 PM)

- a) Appointment of retired judges to constitutional posts such as governor nomination to legislatures.
- b) Delays in appointments recommended by the collegium.
- c) Excessive discretionary powers provided to the Chief Justice, compromising the role of other judges in the Supreme Court.
- d) Opaque functioning of the collegium where questions have been raised over the appointment procedure.
- e) The over-enthusiasm shown by the Judiciary to breach the limits of the constitution has made them subject to public criticism compromising their independence.

INTEGRATED JUDICIARY - (10:06 AM)

- An integrated Judicial system means that we do not have separate courts to entertain cases.
- Related to laws made by different legislatures.
- Decisions of the Supreme Court are binding on all the lower courts and the same goes for the high courts in India.

SUPREME COURT OF INDIA - (10:07 AM)

- Article 124 (1) -
- Supreme Court Judges Act - Justice Judges.
- Seat of Supreme Court.
- Qualification to be SC judge -
- a) A person should be a citizen of India.
- b) Either he should be an HC judge for at least 5 years (or)
- c) If he has been an advocate of HC for at least 10 years (or)

- d) If he is a distinguished Jurist.
- Qualification of HC judges-
- a) Should be a citizen of India.
- b) There are again two ways to become a judge of HC-
- If a person has held a judicial office in India for at least 10 years.
- (Or) If that person has been an advocate of HC for at least 10 years.
- Judicial Services -
- Appointment of Subordinate courts -
- Article 234- The Governor of the state makes the appointment on the recommendation of the SPSC and the HC of the state. (or)
- Article 233 - Through direct appointment as a district judge.
- Here, the Minimum qualification is 7 years as an advocate, but there can be other conditions as well.

CONCEPT OF ALL INDIA JUDICIAL SERVICES (AIJS) - (10:55 AM)

- Article 312 -
- The 42nd Constitutional Amendment Act has paved the way for the setting up of AIJS in India.
- If Rajya Sabha approves through a resolution, Parliament can pass a law for setting up AIJS in the country.
- Recruitment would be conducted centrally by UPSC and Judicial officers shall be allocated to the respective states.
- Some of the benefits of AIJS are as follows-
- a) It will bring a uniform standard of judicial service in the country.
- b) It will help in attracting the best talent to the lower judiciary.
- c) UPSC has an impeccable image which would help in reducing the politicization of the lower Judiciary.
- d) Central recruitment would help in efficient manpower planning.
- Presently more than 40% of the positions are lying vacant in the lower judiciary.

CHALLENGES/ISSUES - (11:03 AM)

- a) The states are reluctant to adopt the AIJS approach as it would reduce their powers.
- b) States have raised concerns with respect to AIJS recruits lacking knowledge of the local language, laws, and customs.

- c) States have raised concerns over the age and eligibility criteria that presently vary from one state to another.

THE TENURE AND SERVICE CONDITIONS OF HIGHER JUDICIARY - (11:08 AM)

- Supreme court -
- The Constitution of India has not fixed any specific tenure for the judges of the SC.
- But retirement age has been fixed for a judge of SC that is 65 years.
- There is a debate that says that the retirement age of the judge of the SC has to be increased, as an early retirement age is not given enough time to apply the expertise that the judge may have gained.
- Second, because the retirement age is 65 years, it compromises the independence of the judiciary due to the lure of post-retirement positions.
- Thirdly, There is a disparity between the experience of Supreme Court judges and the advocates.
- A judge of the SC may also resign from the position by handing his resignation to the president.
- And he can be removed upon a resolution made by the parliament of India.
- In the case of an SC judge, the oath has to be administered by the President or a person appointed by the president.
- High court Judges -
- No tenure is provided in the constitution.
- Retirement age is 62 years as a judge of the HC.
- The resignation of the judge of the HC is also submitted to the president of India.
- And the removal resolution has to be made by the president of India.
- The oath has to be administered by either the governor or the person appointed by the governor.

REMOVAL OF THE JUDGES OF THE SC AND THE HC - (11:27 AM)

- Article - 124(4) - Broad principles of the removal.
- Article - 124 (5) - Detailed provisions, Parliament passed the Judges Enquiry Act 1968, Both SC and HC judges can be removed through this procedure.
- Procedure -
- The grounds for removal are -
- Proven misbehavior or incapacity -
- Since both the terms have not been defined in the constitution. Proven misbehavior in general refers to an act of gross violation of the constitution or such an act that is unbecoming of a judge of the supreme court or the high court.

- Incapacity may be due to the reasons of Physical or mental incapacity.
- According to the judge's enquiry act the following procedure must be followed for the SC and HC judges -
- A motion of removal address to the president may be moved in either house of the parliament.
- Such a motion must be signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha and delivered to the presiding officer.
- Upon acceptance of such a motion, an investigation committee shall be formed that shall enquire the charges against the said judge.
- The committee shall comprise three judges including a judge of the supreme court and two chief justices of the high courts.
- Such appointment is made by the presiding officer of the house.
- If the committee finds the judge guilty, the motion along with the report of the committee shall be taken up for consideration by that house of the parliament.
- Such a judge may appear or be represented to defend his position.
- If that house passes a resolution through a special majority it will sent to the second house, which must also pass it with the same majority.
- The resolution is then presented to the president who should also pass an order for removal in the same session.

APPOINTMENT OF THE JUDGES IN INDIA - (11:47 AM)

- Supreme Court judges -
- Article 124(2) -
- Appointment by the president under his hand and seal in consultation with CJI and Judges of the Supreme Court and the High Court.
- High court -
- Originally appointment of judges of HC was to be made by the president of India in consultation with the CJI, the chief justice of the high court, the governor of the state, and the other judges of the supreme court.
- Originally the appointment was supposed to be made by the president of India.

APPOINTMENT OF CHIEF JUSTICE OF INDIA - (12:07 PM)

- From the beginning, the practice established for the appointment of the CJI was based on the 'Seniority Principle'.
- It worked well till 1973 when the apparent politicization of the Judiciary led to the breaking of this convention.
- This practice also created problems in the form of short and insignificant tenure for the CJI leading to the 'Rotating door Syndrome'

- Post the ADM Jabalpur case and the appointment of Justice M.H Beg as CJI, this convention has been restored.
- The debate over the word "consultation" is mentioned in the constitution.
- In the first Judges' case (SP GUPTA VS UNION OF INDIA) -
- The apex court held that the president should carry out an effective consultation with the CJI and the judiciary.
- But in case of a complete disagreement between the two, the views of the executive shall be given primacy over the judiciary.
- The court stated that effective consultation cannot be reduced to a procedural formality.
- It would be effective only when the government gives enough weightage to the views of the CJI and should provide cogent reasons for not accepting his recommendations.
- Post this judgement several allegations were raised over the politicization of the judiciary.
- The 101 Law Commission report also raised concerns over the appointment procedure to the higher judiciary.

THE TOPIC OF DISCUSSION FOR THE NEXT CLASS WILL BE THE SECOND, THIRD, AND FOURTH JUDGES' CASE, VARIOUS TYPE OF JURISDICTIONS, ISSUES WITH THE JUDICIARY.