

## **Polity Class 37**

**24th November, 2023 at 9:00 AM**

### **INTERSTATE RIVER WATER DISPUTE (09:12 AM)**

- **Article 262 provides an alternate mechanism for the resolution of disputes between the states related to interstate river water or river valley**
- **Cost-effective and less time-consuming as well as conducive to national unity.**
- **It allows the parliament to exclude the jurisdiction of courts including the Supreme Court in such matters.**

### **Inter-State River Water Disputes Act, 1956-**

- **Subsequently, the Parliament enacted the Inter-State River Water Disputes Act 1956, according to which, the Central Government may notify setting up a tribunal upon receiving complaints from the states.**
- **As a result, several tribunals have been set up under the law, including the Mahanadi Tribunal, the Godavari Tribunal, the Kavery Tribunal, etc.**
- **The idea was to provide amicable resolution to such disputes, but despite these efforts, these tribunals have been largely unsuccessful.**
- **It consists of a Chairman and two other members, nominated by the Chief Justice of India from among persons who, at the time of such nomination, are Judges of the Supreme Court.**
- **The Tribunal investigates the matter and makes its report, giving its decision.**
- **The decision is to be published and is to be final and binding on the parties.**
- **Jurisdiction of the Supreme Court and other courts in respect of the dispute referred to the Tribunal is barred.**

### **Challenges in the functioning of the inter-state river water tribunals-**

- **Lack of uniformity in their functioning due to non-uniform application of principles**
- **Overall delay in completion of the adjudication, due to various factors.**
- **The State governments have been reluctant to share data in the absence of which they have not been able to make conclusive awards.**
- **Several times the states have refused to comply with the final awards due to political reasons.**
- **They consist of judges who do not have technical expertise on such matters.**
- **Supreme Court's interference has undermined the role of the tribunals as adjudicators of ISWDs.**
- **Fali S. Nariman identified the two-layered scheme of adjudication by a tribunal as the reason for the inordinate delay.**

### **Way Ahead-**

- **Setting up of River boards for the development of inter-state rivers**
- **Defining a time limit for the tribunals to give their decisions**
- **Mandatory inclusion of technical experts in the tribunal**
- **Adopting a negotiation-based approach before setting up a tribunal**
- **A central repository of water data is necessary for informed decision-making**
- **A Single Permanent Tribunal should be set up which would have multiple benches**
- **Jurisdiction of the Supreme Court and all other courts should be barred in respect of matters**

#### **ARTICLE 263-INTERSTATE COUNCIL (09:41 PM)**

- **Article 263 provides powers to the President to set up an interstate council for the resolution of disputes between the Union and the States and to advise upon resolving the common issues concerning both.**
- **The first Centre-state relation commission recommended the setting up of a permanent Inter-State Council, and subsequently, the president issued an order in 1990 for setting up the same.**

#### **Composition-**

- **PM as Chairperson**
- **6 Union Cabinet Ministers are chosen by the PM.**
- **CM of states, UTs of Delhi and Puducherry,**
- **Administrators of all the other UTs.**
- **It is supposed to meet thrice a year, and the decisions are supposed to be taken by a consensus-based approach and no rigid procedure**
- **Additionally, the Standing Committee of the Council has also been set up under the chairmanship of the Union Home Minister to provide support to the Council in its functioning.**
- **The meetings, proceedings, and deliberations of the Council should be held on camera, away from the publicity normally associated with the meetings at this level.**

#### **Significance of Inter-State Council in present times-**

- **It is the only multilateral institution created under the Constitution to discuss the issues between the center and states**
- **It can play a crucial role in resolving the issues in a constructive manner where the states and Union can leave behind their political differences.**
- **It can prove to be a platform to formulate a common policy on several complex issues, such as Naxalism, Terrorism, and climate change, which require Center-State and interstate coordination.**

- The strained relationship between the Union and state governments in a democracy hinders the growth of the nation. In recent times there has been a growing divide
- Between the states and the Union government, more specifically the fiscal gap.
- In the legislative domain, the farm laws, and the subsequent repeal, the NEET examination, and the Agnipath scheme are some conflicting issues.
- Problems and Challenges-
- It has become a victim of bitterness between the National and regional political parties.
- Despite the best efforts, the council has been irregular in its meetings, for example, the meeting in 2016, happened after a gap of 11 years. The year 1997 is the only exception wherein two meetings were held; since 1990 only 11 meetings have been held against the mandate of 96 as per the order. Out of 11, nine meetings were held by and large to discuss the recommendations of the Sarkaria Commission and consensus-building on the same.
- Since the recommendations are not binding, they are often ignored by the Union and the States
- The Secretariat of the Council that is supposed to provide technical support to the Council is understaffed and ad-hoc in character.
- The setting up of multiple bodies such as NITI Aayog, National Development Council, and GST Council, has diluted its importance and powers.
- Way ahead-
- The 2nd ARC and the Punchi Commission have recommended revamping the Council to make it an effective forum for promoting cooperative federalism in India.
- The 2nd ARC has recommended that the Council should be provided with a permanent secretariat to strengthen its functioning.
- Punchhi Commission suggested that the ISC should be given either constitutional or statutory status, giving its actions greater authority and respect.
- The FC-XI Report suggested making a constitutional amendment to Article 263 to make the ISC responsible for arriving at decisions on fiscal policies having inter-State or Centre-State ramifications
- While the recommendations of the ISC should not be made binding, it may be considered to impose a positive duty upon the Centre and States to give due consideration to any such recommendations.
- In Canada, South Africa, and Australia, the solution has been to set up expert bodies with members who have specialized in relevant subject areas.
- Staff from both the Centre and the States should be appointed to the Secretariat of the ISC, to inspire confidence and enhance co-ordination. This is the approach followed in Canada.

- The recent move made by the Central government to reconstitute the Council seems like a step in the right direction, but it cannot bear fruits in the absence of a political will from both the states and the Centre.

#### **ZONAL COUNCILS (10:14 AM)**

- Five Zonal Councils were set up under the States Reorganisation Act, of 1956. In the Northeast, the North Eastern Council (NEC) was set up under the North Eastern Council Act, of 1971.
- Issues and challenges-
- Absence of an independent secretariat: One of the main reasons for the failure of the Zonal Councils is the absence of their own competent, independent secretariat (except that of the NEC).
- Centralization with no role of states: From 1957 to 1963 the five Zonal Councils were functioning with the help of five separate secretariats as intended by the Act. From 1963, the Secretariat staff, other than the Secretary, of all five Zonal Councils has been centralized in Delhi. With centralization, the Secretariat of the Zonal Councils has virtually become a part of the Ministry of Home Affairs.
- Declining trend of meetings: During the seven-year period from 1957- 63, 33 meetings of different Zonal Councils were held (average being 4.7 meetings per year).
- During the period from 1963 to 1985 about 51 meetings were held (average 2.2 per year).
- Too many agenda points: Too many items in the agenda and meetings at infrequent intervals have also diluted the effectiveness of the meetings

#### **Immunity from Mutual Taxation-**

- The Constitution provides for immunity of the property of one government from taxation by another. The matter is dealt with in Articles 285 and 289 of our constitution.
- Property of the Union shall except a Parliamentary law should be exempt from all the taxes imposed by a State or by any authority within a state. (Article 285(1)) Similarly, the property of a State is immune from Union taxation (Article 289(1))
- Exemption however does not extend to all Union taxes, as held by our Supreme Court, but is only confined to such taxes as are levied on property. A state is therefore not immune from customs duty, which is imposed not on property, but on the act of import or export of goods.
- Freedom of Inter-State Trade and Commerce Article 301-307 relates to freedom in matters of inter-state trade and commerce. Refer to provisions of Articles 301 and 303(1).
- But they are subject to exceptions under Article 302, 303(2), 304(b) and 304(a).
- Over the other in the areas of trade, commerce, and intercourse.

- The above-mentioned freedom has certain exceptions-
- Parliament can impose non-discriminatory restrictions on public interests.
- Even discriminatory or preferential laws can be made by the parliament to deal with the scarcity of goods
- States can impose reasonable restrictions on freedom of trade in public interests.
- A bill imposing such restrictions can't be introduced in a legislature without the previous sanctions of the president.
- Non-discriminatory restrictions can be imposed by states on goods imported from other states or UTs similar to interstate goods.

#### **COMPETITIVE FEDERALISM(10:31AM)**

- Competitive federalism is a concept where the center competes with states and vice-versa, and states compete with each other in their joint efforts to develop India.
- The policy of one-size-fits-all is replaced with different policies of various states based on their priorities within the state. Competitive federalism follows the concept bottom-up approach as it will bring change from the states.
- As a concept, competitive federalism originated in countries such as the US. The meaning of competitive federalism as espoused by the Liberty Foundation in the US would entail a system that allows States to compete with each other over a broad range of issues to provide citizens with the best value goods and services at the lowest cost.

#### **CENTRE STATES FISCAL RELATIONS (10:55 PM)**

- Fiscal Imbalance between Union and states-
- 15th FC stated that states have 37% of financial resources and are responsible for 63% of expenditure is more cost-intensive under the control of states as compared to unions.
- The taxation resources available to states are weaker when compared to the union.
- Not just that but the elasticity of financial resources available to unions is much higher as compared to states.
- Union has access to revenue sources such as cess and surcharge which are not shared with states.
- The lack of fiscal prudence shown by states results in a weak fiscal situation.
- The states can't borrow money from outside India whereas the centre has no such restrictions.
- Refer to Art. 292 and 293.
- The states having an outstanding loan to pay back to the center can't borrow more money within india without the consent of the center and the center often imposes

unreasonable conditions on the same but there are no such limitations on the union.

- State govt. feel that they are pressured to revise the remunerations for the state govt officers by the award of the central pay commission.

**How Union and States in India raise their revenue:**

- **States:**
  - i)Non-tax revenue-
    - Income from minerals, royalties, state PSUs, forest produce
  - ii)Tax revenues-
    - Exclusively state subjects- like taxes on agriculture income, animals, fuel, and property.
    - Art. 269- levied and collected by the union but assigned to states (levied wrt interstate trade and commerce, the consignment of goods, duties on succession of agricultural land)
    - Art. 268- levied by the union, collected and appropriated by the states (stamp duties on promissory notes, medicinal products, toilet products containing alcohol)
  - State GST
- **Union:**
  - i)Non-tax revenue-
    - Disinvestment proceeds, sale of natural resources, earnings from central PSUs.
    - Cess, surcharge
    - The divisible pool of taxes-union list taxes (income tax, corporate taxes)
  - CGST
    - 15th FC->41.5% of the divisible pool will go to states (Vertical devolution->Non-conditional grants)
    - How much each state will get-> (horizontal devolution)
  - Art 275: Post-devolution revenue deficit grants/grant in aid/statutory grants- made by parliamentary law->given only to revenue deficit states(-->may be conditional or non-conditional)
  - These are of two types-
    - i)For revenue deficit purposes
    - ii)For the welfare of scheduled tribes in states

**OTHER SOURCES THROUGH WHICH UNION GIVE MONEY TO STATES (11:46 AM)**

- **Art 270: Divisible pool**
- **Art. 275: Post-devolution revenue deficit grants/grant in aid/statutory grants- made by parliamentary law.**
- **Art. 282: It is called Discretionary grants or conditional grants which come in the form of Centrally sponsored schemes**
- **Before 2014:2/3rd grants were made to states via discretionary roots.**

**NEXT CLASS: CENTRE STATES FINANCIAL RELATIONS CONTINUES**