

Centre State Relations in India

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Lecture 32: Discretionary Grants (Art 282)

Greetings to all of you. We are discussing financial relations and in that we have discussed on distribution of revenue and in that we have also discussed that if there is any gap on such distribution then what are the constitutional measures for filling that gap and in that regard we have discussed constitutional mandate given under the Constitution to the Centre to fill in that gap in form of grants-in-aid. In the Constitution we do have another provision which is a very significant one and plays a very valuable role in Centre State relation is Article 282 which talks about discretionary grant to Article 275 is a mandatory grant and Article 282 is a discretionary grant. Let us today look at what this Article 282 talks about. So, today we are going to discuss discretionary grants under the Constitution. We will be also looking at the debate which has taken place in the Constituent Assembly on Article 282 and how Article 282 has been addressing the issue of Centre State relation and to what extent these grants-in-aid is considered on the matter of freebies and centrally sponsored scheme.

So, in today in today's discussion we will be looking at the scope of Article 282 in order to understand that how on the matter of financial relation Article 282 has been playing a significant role in bringing a kind of fiscal balance between the Centre and the States. Now, when you look at discretionary grants you would find that this becomes very important because of complete mismatch between the responsibilities entrusted upon the States to commit to the welfare of the people and their capacity to generate revenue. As per the report of the 15th Finance Commission

you find that States they had only 37.3 percent of the resources available with them whereas, the responsibility upon them is 62.4 percent of the expenditure.

So, there is a complete mismatch which happens and this mismatch gets addressed either through the distribution of revenue made on the recommendation of the Finance Commission or through grants-in-aid which is being done through parliamentary legislation. Now when you look at this responsibility resource disparity this certainly leads to a kind of vertical fiscal imbalance and for that the Constitution provides for different routes different channels through which one has through which the State can meet the expenditure. Discretionary grant is one such method of flow of funds between the Union the States where whatever the State plans or whatever in general in the interest of nation money shall be made available for fulfilling that interest to the States. So, discretionary grants under the Constitution confer a kind of necessary authority upon the government to allocate funds for various purposes.

So, this discretionary grant is to be understood different from a specific grant. Discretionary grant allows governments to use funds on perceived necessary necessity and priority. So, it is not that where there is a kind of mandate is there and that mandate needs to be fulfilled and for example, what we read under Article 275 the welfare of Scheduled Tribe regions or tribal population in that there has to be a kind of a specific grant to come from this this the Union by virtue of Article 275 of the Constitution. So, here it is like the government makes a kind of prioritization on social infrastructure and accordingly allocates funding for the same. Part XII the Constitution deals with Miscellaneous Financial Provisions and in that you find Article 282 is there. Article 282 is the power given to the Union and the States to both where they can make any grant for any public purpose.

So, this grant is for any public purpose unlike what you have seen in Article 275 where it is for filling that gap between revenue resource mismatch or for tribal areas or tribal population. Here it is for public purpose and there it says not to standing that the purpose is not one with respect to which Parliament or the Legislature as the case may be may make laws. So, very wide power has been given upon the upon the Union and the State to plan expenditure through this Article 282 because wide discretion has been there upon the Executive to make a make a plan and then spend the money and that that requires to be only fulfilling the criteria of public purpose. When you

look at it you find that in the Constituent Assembly Debate this Article was discussed as Draft Article 262 and it was accepted without any much discussion and for very obvious reason that this is something which is a sort of special provision been done where both the Union or the State they can come forward depending upon their financial strength that they can take up certain social agenda they can take up some important economic agenda and they can accordingly allocate fund for fulfilling that agendas that is what it says. Now, there was a provision under the Government of India Act 1935 on discretionary grant that was a Section 150 of Part 7 which talks about expenditure deferrable out of Indian revenue that is what it says.

So, Section 150(1) provides for the general principle that no balance shall be imposed on the revenues of the Federation or the Provinces except for the purpose of India or some part of India that is what it said and then it says that Province may make grants for any purpose not extending that the purpose is not with respect to Federal or Provincial Legislature as the case may be. So, you can very well look at it that the language is very similar what has been adopted in 1950 Constitution and one important point to take note is that the competence is not considered as a prerequisite for determining discretionary grant. It is not important that there is a legislative competence as per the constitutional design for taking up the issue of for taking up the benefits of discretionary grant under it was neither it was in 1935 Act nor it is there under 1950 Constitution. So, what discretionary grant when you look at the language of Article 282 it says may grant meaning thereby there is a discretion with the Union or the State it is not a mandate unlike Article 275 where there is a clear mandate to come up with a grants-in-aid for a defined subject matter which is given under Article 275 that discretionary grant can be for public purpose. A very fluid very open ended condition for making the grant and discretion lies with the Union of the State that what shall be determined as a public purpose and then further it says notwithstanding that the purpose of making laws meaning thereby that it is immaterial that the subject matter on which the Centre or the Union gives the grant that whether the Centre or the Union has got a legislative competence to make law on that or not. Legislative competence means that whether the concerned subject matter on which grant has been identified or connected, whether it is in List I for the Union government or List II for the State government or not. It is irrelevant regardless of the legislative competence given by virtue of Article 246 read with Schedule VII, List I, II and III this discretionary grant can be there for any purposes. The only requirement is

that such purpose must comply with the idea of public purpose.

So, the language of Article 282 is a sort of a residuary in nature it is something where it enables the Union to deal with this kind of unforeseen contingencies. The framers of the Constitution conceived that Article 282 with the understanding that it would be utilized for addressing the Union and the States if that was the idea there was no purpose in evolving such a complicated set of relations of shares assignments and grant. Meaning thereby that Article 282 is not to be invoked for filling that gap on revenue responsibility mismatch, for that one has to look at Article 275 one has to look at the schemes of distribution of revenue between the Centre in the States as recommended by the Finance Commission. Article 282 is not a scheme for making such readjustment between the Union and the States. So, Palkiwala a renowned jurist in his opinion in 9th Finance Commission opined that Article 282 is not intended to enable the Union to make such grants as fall properly under Article 275 because Article 275 is for a specific purpose a mandatory grant. Article 282 enables merely a residual power which enables the Union or a State to make a grant for a specific purpose where legislative competence is not very relevant or something to be looked at. So, what is the discretionary grants feature let us look at it. One it says it has to be flexible where government can very well decide on allocation of funds according to the necessity priority of the government that what kind of prioritization government has done on social infrastructure, or physical infrastructure, laying down the roads or a school education or higher education or health. So, it is entirely for the State to take a call that the grant shall be given for what purpose.

Utilization it says scope of utilizing the discretionary grants are wide and adjusted as per the need. Diversified the discretionary funds help the government to diverse the funds for schemes and welfare projects wherever required. So, it is not that it is very specific and it has to be only for that particular purpose for example, when you read language of Article 275 it in proviso is categorically says for welfare of Scheduled Tribes and tribal population whereas, no such kind of conditionalities are attached under Article 282. The language of Article 282 makes it very clear that there is a no legislative control over the discretionary grant and Executive is empowered to channelize the flow of fund without legislative hindrance. So, that is what is a very significant one where a kind of a space is given where a clear cut agenda or mandate is been given to the Executive that they can decide on priority they can decide on priority and accordingly allocate

the grant for fulfilling that priority for fulfilling that purpose.

When you look at the classification of discretionary grant you find that the classification is either is it could be a scheme wise transfer, it could be a small saving loans, it could be for assistance for meeting relief expenditures, ways and means advances could be there or miscellaneous loans including overdraft, gap and special accommodation loans. So, these are all kind of subject matters on which grants can be granted under Article 282 of the Constitution. When you look at the regulation of discretionary grant, the General Financial Rule 2017 governs a discretionary grant, where complete freedom given to the Executive. It says Rule 243 when an when an allotment for discretionary grant is placed at the disposal of a particular authority, the expenditure from such grant shall be regulated by general or special orders of the common authority specifying the object for which the grants can be made and any other conditions and that that shall apply to them. Such discretionary grants must be non-recurring and not involve any future commitment. So, it says general or special order issued by the competent authority.

So, there is a no specific requirement of going to the legislature and taking authorization every time and further it says discretionary grants must be non-recurring and not involve any future commitment. So, that is also equally important. States they have enacted a specific Rules related to discretionary grants and from the State it goes to the local bodies third-tier government- Panchayats or Municipality for taking up a specific areas and accordingly the local governments be it Urban Local Bodies or Panchayats they spend money as per the direction given by the State. So, for example, Uttar Pradesh has enacted the General Rules relating to Discretionary Grants by the Chief Minister or a Cabinet Minister, Tripura has enacted chief Ministers Discretionary Grants Rule 1979 and then in West Bengal also you have West Bengal Treasury Rules of 2005. So, apart from the Union even the State government because you have read the language of Article 282, Article 282 talks about discretionary grants for both the Union and the States. For a State it is for local bodies for Union it is certainly for the States.

So, important issue is that earlier it was like when Planning Commission was in place, Annual Plan Grant was coming through this route where it was in suggested that whatever Planning Commission says it should be routed through Article 282 to address a priority area. So, primarily the channel of Article 282 was coordinated by the Planning Commission where the grants were

coming from the Union to the States under Annual Plan. Article 282 has been used as a substantive clause under which all developmental grants were taking place, developmental grants to the States from the Union. In fact, any grant under Article 282 diminishes the role of the Finance Commission because it is not based on the recommendation of the Finance Commission. That is one of the important concerns because Finance Commission decides on the distribution of revenues based on objective parameters and that gets discussed on the floor of the House.

Here it is something which is a prerogative of the Executive and therefore, you can very well visualize that there could be extraneous considerations for designing the necessary policy under Article 282. So, Article 282 because it is not based on the Finance Commission and therefore, there it is been suspected that it is not being followed on a very objective criteria when it comes to identifying the States and identifying the priority area. Under discretionary grant one of the major issues has been Centrally Sponsored Schemes. In India the Central government comes up with various socio economic schemes where they empower the people for example, *Sarva Shiksha Abhiyan*, distribution of food grains. So, all these schemes come from the Centre and then when the schemes come from the Centre there is a transfer of revenue from the Centre to the State to meet the expenditure.

So, the Centrally Sponsored Schemes is formulated and partially financed by the Union and the execution responsibilities are given to the States as per the guidelines established by the Union. So, the route taken to implement Centrally Sponsored Scheme is Article 282 and not the Finance Commission. So, Finance Commission does not play a role here which is a constitutional body. So, here it is the Central government which does it. Earlier it was done through the Planning Commission or National Development Council. Now, because Planning Commission has been done away with it is now been done with a Nodal Ministry. For example, a plan on public health shall be formulated and shall be monitored by the Ministry of Health.

So, this in a way has been argued and said that this has created a sort of differences between the Centre and the States particularly on a fiscal front and financial issues. There are different schemes which the government makes and now, the question is that whether the schemes which are made by the Central government whether they are really an agenda of priority for the State or not. If it is not an agenda of a priority for the State then obviously, State shall be implementing it

without any kind of focused attention, but implementing it in consideration of the money what they would be receiving under this grant. So, now these 131 Centrally Sponsored Schemes has been restructured on the basis of the recommendation given by sub-group of Chief Ministers in 2016-17. Now it has come under 28 umbrella schemes consisting of six 3 core schemes and 20 core schemes and 2 optional schemes. So, schematic transfer of the Union government in the form of the Centrally Sponsored Schemes and Central Sector Schemes to the State and Union Territory amounted to almost 12.81 percent of the gross revenue received of the Union during the award period when you look at the last Finance Commission that is 2015 to 2020. So, you can very well make out that the total revenue with the government is with the State government is receiving it on the Centre 12.81 is coming on the head on which it is the Central which is directly controlling the agenda on which the money is to be spent and they are the one who are planning the agenda.

So, States are in not a game there in it is entirety. State is been entrusted only with the responsibility to execute such plan. So, that is a cause of concern about Centre State relations. So, why it is becoming a cause of concern on the fiscal federalism because centrally sponsored schemes are being made by the Central government on different subject matters which are primarily the responsibility of the States. For example, public health which is a State subject under Entry 6 of List II and you would find that the Government of India making the scheme to provide public health system for the Indians and the responsibility is given to the States to implement such schemes.

Then the autonomy in exercising the executive power under Article 162 gets undermined because the formulation is done by the Central government. So, therefore, State is bound to execute it as per the directions of the Central government and then control by the Union over the spending power of the State. So, States are not given a free hand, it is the Centre which in a way regulates that how that funding shall be taking place. So, that is that is in a way becomes a matter of concern on the issue of financial relationship between the Centre and the States. Though the responsibilities are clearly divided between the Centre and the States under Schedule VII, but at the same time it is the Centre which is giving almost 12.81 percent as per the last Finance Commission on those subject matters which are exclusively with the States. The matter of the Article 282 have gone to the Court of law particularly that how do you understand the meaning

of public purpose in the context of the scheme called MPLAD scheme wherein Members of Parliament they have been given an annual grant to spend money on developmental activities in their constituencies. So, the question was raised that can such grant be given under Article 282 or it is something where the Legislature is dispensing its responsibility, it is evading its responsibility of not controlling the finances and enabling the Executive to decide on finances which is not constitutionally approved or valid. *Bhim Singh v. State of Jammu and Kashmir* 2010 this matter came before the Supreme Court and Supreme Court has said in this case that MPLAD scheme certainly complies with or conforms with our constitutional requirement because Directive Principles entrusted responsibility on both the Centre and the States to take care of socio economic developmental activities and in furtherance of that if the scheme has been designed by the Central government to allocate certain funds to the Members of Parliament which they can spend depending upon the priority area what they identified in their constituency then such a scheme has to be seen in pursuant to Part IV of the Constitution. It says that MPLAD scheme certainly falls within the meaning of public purpose because the entire idea is to fulfill the development and welfare schemes as suggested in Part IV of the Constitution and it says that Article 282 is normally meant for a special temporary or ad hoc schemes.

So, this is an important observation Article 282 should not be seen as a kind of ordinary route to fill the mismatch between revenue and expenditure on the matter of Centre State financial relation. It is only a temporary or ad hoc scheme and the power under Article 282 to sanction grants is not restricted. There is no limit its public purpose is a very wide expression given that is what the court has said. So, court has said that on the matter of authorization by the Legislature on the finance the court says that anyway they get authorized by virtue of Article 113. It says that upon the demand for grants having made under Article 113, Appropriation Bills gets introduced on the floor of the House and accordingly this gets approved. So, the requirement of having approval from the Legislature is met even with regard to MPLAD scheme because when it says that it shall be done by making laws under Article 282 appropriation law which in a way authorization by the Legislature to the Executive to spend money it says that that that gets fulfilled through the Appropriation Act. The allocation of grant to the Members of Parliament is getting approved getting sanctioned through Appropriation Act which is passed by the House. So, the court categorically says that a specific law is not needed or a specific proposal is not

needed to be taken up in the Parliament on the issue of MPLAD scheme.

So, court has given a kind of very wide interpretation and court has said that Article 282 does not provide for any restriction because the language used there is a public purpose and therefore, MPLAD scheme certainly falls within that. A discretionary grant as I said it is has it is also to do with the State. The State has also been given similar kind of power to determine grant for public purpose. In one of the cases which has come before the Bombay High Court the court has said that if the government purports to spend money for a purpose which it characterizes as a public purpose though in point of fact it is not a public purpose the proper place to criticize the action of the government would be the Legislature or the Appropriation Committee. Courts should not ideally get into that question. It is for the Legislature or the Member to look into it. So, court in a way has indicated in this Bombay High Court judgment that let it not become a matter of judicial review. Let it be deliberated on the floor of the House. Now when you look Bhim Singh Case and wide discretion given in the Article 282, a question has been raised with regard to freebies the government announces for people. Whether such freebies can also be brought within the ambit of public purpose? This is an important question which has been now under consideration before the Supreme Court in Ashwini Upadhyay Case where the question has been raised that can this freebies be aligned with the idea of welfare policies let down under Part IV of the constitution. Let us look at it that how the Supreme Court responds to this important question that if at all this is a welfare policy connected with Directive Principles which the court has said in relation to MPLAD scheme in Bhim Singh Case. Then Article 282 becomes a relevant provision for authorizing such freebies by the government because the expression used is public purpose

How discretionary grant affects the Centre State relation? It is the Union's discretionary over grants it says that the State government needs to comply with the scheme of the Centre. The Centre formulates the plan and expects the State to execute it. So, Union's scheme and policies are there and for a State to implement it. So, in a way it is the Union's control over the States. Then one can also look at it that it is also a case of cooperation because Centre has got a money and Centre wants that money should be spent on a very specified purpose and that let the money get spent depending upon the focus area and that is possible to see a kind of success when both the Centre and the State comes together. So, in a way it also forces cooperation and collaboration

by providing funds for shared initiatives or projects encourage joint efforts to address common challenges or achieve mutually beneficial goal also. So, that is also one benefit of Article 282 provided Article 282 is not becoming a kind of channel for substituting the mandatory route which is there under Article 275 or the recommendation of the Finance Commission.

Then another important point is that no legislative competence is there. So, it is irrelevant that whether Parliament has been given power to make law on that particular subject or not whether a particular subject falls within the parliamentary jurisdiction or State jurisdiction is irrelevant. If it is a matter of welfare, common concern, public welfare then Article 282 can be invoked both by Parliament or the States for larger public goal larger, welfare goal. These are the references for this session. Thank you very much.