

Centre State Relations in India

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Week 08: Centre-State Relations: New Trends and Emerging Issues

Lecture 37: Mechanism to Resolve Centre - State Disputes

Greetings to all of you. So now we have come to the last module on this course, last module of this course Centre-State Relation in which we will be discussing emerging issues and what are the recent trends going on in the Central State Relation. In today's discussion we shall be talking about the mechanism to resolve Centre State disputes. In today's session the discussion shall be centering around the scope of Article 131 and Article 143 and what are the other methods given to resolve the dispute between the Centre and the States. The reason why we have brought it under this module of emerging issues because in recent time it has been observed that under Article 131 issues are being taken up by the States which are of a distinct character where the State is challenging the Central Law on the ground that it valid fundamental rights or we shall also look into those judicial pronouncements where the Court has clarified the ambit of Article 131 of the of the Constitution. So, this is what we will be discussing in this module in this lecture.

Having a dispute in a federal setup is a very common phenomena because of the very fact that language has its own limitation and with whatsoever precision a Constitution is drafted there shall be always an attempt to encroach power of each other respective domains and thus it is desirable to have a very clear schema to resolve the dispute whenever such questions of encroachment on domains encroachment on powers arises. One for the Indian Constitution because is an elaborative Constitution it works in advantage and disadvantage at the same time. Advantage in a sense that it in detail refers to powers of the Centre and the States and such detailing out may have effect on minimizing the conflict disadvantage in a way where both the

governments they try to read the power in a very broadest sense and bring in an argument of asserting the power belonging to the respective governments and that is why what you find a cases of conflict between the Centre and the States on competence issue on the issue of legislative competence and there where the mechanism given in the under the Constitution becomes relevant. So, the Constitution provides for institutions who shall be interested with the responsibility to look into the issue of Centre States and under the Indian Constitution you would find that several provisions are there which provides for a mechanism for resolving the dispute, some are being prominently used, some provisions are not being used the way it should have been possibly because of the character of the institution or possibly because of the apprehension on the part of experimenting with the newer institution to resolve the dispute, but then those institutions certainly address the concern of the conflict and concern of the parties and suggest an effective way of resolving the confrontation between the Centre and the States.

Now when you look at the mechanism which are given under the Constitution we have divided into three parts though advisory jurisdiction also is given to the judiciary, but then we have made a distinction between Article 131 and Article 143 for a very obvious reason that advisory jurisdiction does not bind the government. So under the first heading we have kept judicial mechanism where we have bracketed Article 131 which is the important provision on the matter of institution responsible for resolving the dispute where the jurisdiction is been given upon the Supreme Court. Then we have also identified other provisions which we have termed it as non-judicial mechanism for example, Article 263 which talks about Inter-State Council, Article 279A GST Council or Article 307 which has never been given effect where it talks about establishment and authority by the Parliament to look into the objectives of Part XIII of the Constitution. So when you talk about Article 131 you find that Article 131 appears to be the main provision incorporated under the Constitution for addressing the conflict between the Centre and the States because Article 131 confers original jurisdiction upon the Supreme Court to check up the Centre and the State relation. When we say original jurisdiction what we infer is that no other Court shall have jurisdiction to look into the dispute between the Centre and the States and Article 131 is drawn from Section 204 of the Government of India Act 1935.

Now when you look at Government of India Act 1935 where you find a similar provision Federal Court has been interested with the original jurisdiction to decide on the Centre and the States

dispute where it has been categorically stated that the jurisdiction is bestowed on the Federal Court to the exclusion of any other Court. So other Courts were excluded and it was also said that the original jurisdiction of the Federal Court shall involve the federation or any of the provinces or any of the federated States that's what it said and it also said that Federal Court shall exercise original jurisdiction on disputes involving questions of law or question of fact on which the existence or extent of a legal right depends. So in a way Section 204 limits the jurisdiction of the Court and the similar provision has been taken up under Article 131 with certain modifications as it was required for an independent India. When Article 131 was being discussed in the Constituent Assembly it was debated in detail and certain suggestions had come from the members. For example suggested that there shall be no distinction made on the jurisdiction of the Supreme Court to take up disputes in relation to Part I, Part II and Part III States. Let them have the same claim if there is an issue of legal right. So that is an significant suggestion which has come from Mr. Krishnamachari to not to make distinction based on categorization of the States which was done at the commencement of the Constitution as we are aware that the States were categorized in different parts in the year 1950 and obviously, after reorganization that had that categorization had been done away with. Another member Sri Brajeshwar Prasad was of the opinion that the Centre State dispute shall not be brought to the door of the Supreme Court. He was of the opinion that because States are subordinate to the Centre let the Centre decides on the conflict and the decision on the Centre shall be binding upon the states.

So this was his suggestion and then other member Mr. Thanu Pillai agreed with the suggestion of Mr. TT Krishnamachari on the point on not making a distinction between Part III and Part II States and that suggestion was well accepted by the Chairman of the Drafting Committee and this particular proviso was omitted from the draft constitution. Now when you look at the language of Article 131, Article 131 makes it very clear that it is an original jurisdiction Supreme Court enjoys original jurisdiction, Article 131 confers original jurisdiction on the Supreme Court.

The language starts with the subject to clause it says subject to the provisions of the Constitution because Constitution of India clearly identifies the subject matter which need not go to the Supreme Court for resolution for conflict resolution other forums are suggested and because Supreme Court has been made original Court to look into the dispute between the Centre and the

States it categorically says to the exclusion of any other Court. So other Courts are not entitled they do not the other Courts do not have competence to examine the Centre State disputes. So what are the disputes which can be taken up under Article 131 it says between the Government of India and one or more States between the Government of India and any State or States on one side and one or more States on the other side or between two or more States. So parties to the dispute under Article 131 could be either of them.

Now one important aspect which was noticed in the language in the drafting of Article 131 what was that aspect that there was no reference of the State government in the language of Article 131. When you read you find that references of the State or not the State government and therefore the question was raised that was it a purposeful omission was it an intentional omission or there is inadvertent error committed by the drafters because the State and State government would connote two different meaning one which is all about the political executive and other about the federating units that is what it says. So when you look at the views of Mr. HM Seervai he suggested that it is an inadvertent drafting error and there is nothing big miss or significant absences are there no significant impact is there where if the government is missing from the State because that is what would be meaning that is what would be inferring the same thing.

So and this is what the Court has said in a State of Bihar which is an old judgment of 1970 on the question on that who shall become party to the dispute under Article 131. Court has categorically clarified that by looking at the language of Article 131 where it says that it shall be a dispute between the Centre and the federating units it shall be a dispute of a nature where federal issues are being brought up before the code Court of law. Considering this aspects of Article 131, Article 131 shall not be allowed to be invoked by private citizen by a firm, by a corporation, indicating very categorically that this deduction is of a different kind conferred upon the Supreme Court for taking up dispute between the Centre and the States which relates to federal relation, which relates to the claim on legal right by one over another and thus it is very clear that private parties ordinary citizens or firm or corporation even if the corporation is owned by the government they shall not become party to the dispute under Article 131. In a State of Rajasthan the issue was raised that whether State shall include the term State government and the Court in this case refuse to give a narrower meaning to the term on Article 131 and said that Article 131 can very well be read to give necessary jurisdiction to the Supreme Court to take up the matter

between the Central government and the State government. There is a no such limitation on the power of the Supreme Court based on the term used the State under Article 131. What are the disputes which can be taken up under Article 131? Disputes which can be taken under Article 131 must talk about existence or extent of a legal right which depends on question of law or question of fact. If it is not dependent upon question of fact or question of law then it is not desirable to take it up before the Supreme Court under Article 131.

So in this regard it has been categorically said that Article 131 shall always mean in reference to a legal right depending upon a question of fact and question of law and no issue which are pertaining to political nature, political character should be brought under Article 131. Now when you say it should not be of a political character what does it mean? It categorically says that the disputes which are related to those information which cannot be weighted based backed by evidences and Court may not be the correct forum to evaluate the same. This doctrine of political question is well established doctrine to exclude the jurisdiction of the Court on the matter between the Centre and the States. So the only requirement as per the language of Article 131 that it must refer to a legal right what is being claimed is based on a legal right which is arising out of the Constitution and it is not necessary that legal right has been infringed in anticipation if there is a law made and the State government is in anticipation, is anticipating that law shall violate the right. Then in such a situation also the State governments get necessary constitutional backing to approach the court under Article 131, that is what the court says in State of Karnataka v. Union of India where it says that whether a State or other States or Union differ on a question of interpretation of the Constitution.

So that a decision of it will affect the scope or exercise of governmental powers which are attributed to a State. So law is been made but then it has not affected but then there is a genuine apprehension that such law shall take away the power of a state then that can be taken up under Article 131. So it is not required that there is an infringement already done that is not the scope of Article 131. Article 131 also provides for an exception where it categorically says that certain matters need not go to the Supreme Court under Article 131 and what are the matters it says treaty, agreement, covenant, engagement, sanad or other similar instrument which the government has entered into or executed before the commencement of the Constitution and continues in operation after such commencement they need not go to the Court under Article

131. And if the proviso to Article 131 has been substituted through 7th Constitutional Amendment prior to this amendment the proviso was contained in clauses 1 and clauses 2.

So now you have one proviso where it says that whatever treaty has been signed, whatever agreement has been signed those treaties or agreements or covenants need not become a matter of judicial scrutiny under Article 131 because it is a well-known fact that the treaties, covenants are being signed under certain political scenarios and the Court may not be a right forum to really wait the considerations which were taken into account for signing those documents. So what are the questions excluded under Article 131? It says subject to the provisions of this Constitution, so Inter-State Water Dispute for example is something which is excluded that is what is being suggested then when this provision is there one can really imply, one can categorically indicate that makers were very clear that on certain matters the matter on certain matters judiciary should stay away, judicial resolution should stay away and it should be provided if the resolution should come from a different forum that is what this provision 262 and 363 provides for. And another important point which I have already said that any question which is purely of political nature they are excluded they are not to be included under the same there is something which is not intended to be part of it. Political questions State of Rajasthan, the court has categorically highlighted on it that political questions are not to be taken up and as I explained that why it is not to be taken up because factors which are there for taking a political decision they may not have a judicially measurable parameters for the Court to look into it. So therefore it is suggested that such questions should not become a matter of judicial review let the political question be resolved before a political forum and not before the Court of law and this is universal principle where it says that political questions are not to be taken in the Court of law.

Though it is important to take note that decisions given by the Supreme Court under Article 131 such decisions are having political ramifications but then political questions are not to be taken up before the court under Article 131 that is a clear position as far as reading of constitutional law is concerned. Supreme Court Rules are being framed in relation to Article 131 where Order 26, Rule 6 of the Rule of 2013 deals with the rejection of plaint where it says that if cause of action is not disclosed in clear terms then that becomes a ground of rejection of the plaint and what is this cause of action as per the Rules it says a dispute involving any question on which the existence or extent of a legal right depends or as the preconditions subject to which suit could

properly be filed under that Article. Then Article 131 becomes a kind of sustainable jurisdiction for parties to take it up. So the phrase cause of action in the context of Article 131 was read as nothing more than a ground or basis to sue the other party that is what the Court says in *State of Haryana v. State of Punjab*. What are the elements of cause of action? The jurisdiction which is covered, jurisdiction which is intended to be conferred on Article 131 it says that it should not be based on the broader principle of CPC it is not that CPC shall be made applicable, Constitution does not describe proceeding which may be brought under Article 131 as a suit so it does not refer to the word cause of action instead what it employs is the word dispute. So we need to be making very clear that Article 131 is a distinct jurisdiction it is a sui generis kind of provision under the Indian Constitution and no technicalities as let down in CPC should be brought in to regulate the jurisdiction under Article 131.

So Article 131 provides for a condition which categorically says there shall be an existence of right or on the factors on which the legal right is been claimed so that is the sole condition which needs to be fulfilled for taking up the jurisdiction of the Supreme Court under Article 131 that is what is important to look at it. Now the important question which has come is that whether Article 131 be invoked for examining the validity of the Central Law, can central law be challenged by the State invoking Article 131. Because generally what you find is that the Central Law is being or the law in general is being challenged by citizen or by the corporation on the ground that it valid fundamental rights or on the ground that it is been enacted without any competence. Now this question has been taken up in *State of Madhya Pradesh v. Union of India* where Section 58(3) and Section 58(4) of Madhya Pradesh Reorganization Act was taken up and where the Court has said that the appropriate forum is the extraordinary writ jurisdiction under Article 32 or Article 226. Article 131 is not the appropriate forum to examine the validity of the Central Law but then there is another judgment coming from Jharkhand where the Court has disagreed from this view point and therefore the matter has now been referred to a larger bench. Interestingly, we find that this in old judgment of 1963 matter was taken up on the validity of a Central Law that is Coal Bearing Areas (Acquisition and Development) Act 1957 where the Act allowed Union to acquire rights over coal mining lands even though land as a subject belongs to the State.

Now interestingly in this case, Court did not get into the question on the validity of the Central Law on the ground of Article 131 in that way what the Court did is that Court read the legislative competence and on that ground the Court has said that there is legislative competence of the Central government of making a law on this subject matter and thus the law is a valid one. So Court in a way has given taken a separate route for examining the Central Law in counter distinction to what you have seen in State of Madhya Pradesh Case or State of Jharkhand Case. So now the question is that when the government challenges the laws when the State government challenges the law how the jurisdiction under Article 131 shall be taken up because as we are aware that Kerala government has also challenged the validity of Citizenship Amendment Act where Kerala government has said that this law is validity of constitutional principles and thus the Kerala government has said that it is government is not bound to implement the law or for example, Chhattisgarh government has also invoked Article 131 to challenge the validity of National Investigation Agency alleging that the Act takes away some of the powers given to the State government under List 2 of Entry 2, i.e., law and order. So the questions are there before us that can a state invoke Article 131 to challenge the validity of the Central Law or can the Union invoke Article 131 to challenge the validity of the State law. It will be interesting question to see that how the Court responds to this very legal question.

States capacity to institute litigation when you look at it talks on two different broader aspects one is it says *parens patriae* meaning thereby State acting as a guardian of the people and enforcement of its own rights, rights which are given to the State under the Constitution. So this is something where State institutes a suit in those capacities. Now State representing a citizen in the case of Kerala government challenging the Citizenship Amendment Act or Chhattisgarh government challenging the NIA Act, whether in those cases these two governments are suing the Central government in the capacity of *parens patriae*. Now when you apply the test let down in a State of Bihar Case where the parties to the suit and legal rights should be the States and not the private individuals. It says that State can invoke Article 131 to enforce or claim its own legal rights not that of people in a representative capacity or *parens patriae*.

So when you look at it there is a clear demarcation let down that it is the legal right of the State which is given under the Constitution that becomes a subject matter of litigation under Article 131 and not State shall not be or not to be encouraged to take up the rights given to the people

and invoke Article 131 for challenging certain laws based on the rights given to the people. These are the constitutional relation to attract Article 131 when you look at it between the Centre and the States certain important decisions whether there is any relational legal matter involving a right liberty power or immunity then when a dispute arises in the context of constitutional relationship that exist between the Centre and the States and when a dispute relates to the rights arising out of relationship having a direct bearing on the federal structure where the autonomy is been given and such autonomy is not been regarded by either party then Article 131 becomes and becomes a relevant forum for resolving such disputes.

Now these two issues which we thought of discussing it because the very module is based on emerging issues on NIA it was suggested that it involves the interpretation of Entry 2 of List II and relating to the State subject whereas on the other hand Parliament has enacted a law relating to investigation which primarily suggested to be a subject matter of the State. So in a way NIA has affected the legislative relation between the Union and the States so that is how it is been said that suit is maintainable. When it talk about CAA it is said that this law is been enacted by virtue of Entry 17 of List I which is on citizenship and therefore there is a no question of any legal right of the State of Kerala and therefore this should not be not maintainable. So this is kind of view point on this two important subject matters which are right now under considerations.

We thought of discussing advisory jurisdiction as well though it goes before the Supreme Court but then it has a different connotes when you compare with Article 131. So President may ask the Supreme Court question of law or fact that has arisen or likely to arise of public importance and Supreme Court may give an advisory opinion and can refuse to give such opinion also if there are compelling reasons and good reasons to not to give the opinion. Under Article 143(2) a matter which is excluded from the Supreme Court jurisdiction Article 131 may be referred to it for opinion. So you can very well look at it that what is excluded may come before the Supreme Court for advisory jurisdiction and the Supreme Court after looking at the matter after looking at the questions if decides to hear the matter then Supreme Court can give the advice reported to the President but such advice is not binding upon the Supreme Court that is what is the legal position. But there are instances where the Supreme Court has invoked Article 143 where advisory jurisdiction of the Supreme Court has been invoked on a matter of what a dispute between Punjab and Haryana. Punjab Assembly has passed this law on Punjab Termination of

Agreement Act 2004 the President invoked the advisory jurisdiction and in this matter the Court has categorically said that Government of Punjab does not have jurisdiction does not have competence to unilaterally terminate the agreement and then such law was declared as unconstitutional, such legislative measure of the State of Punjab was considered to be ultra vires to the Constitution. So broad language of Article 143 when you look at it what you find that ample power is given to the President to invoke advisory direction the word question of law or question of fact coupled with public importance gives a wider direction to the Supreme Court under Article 143 whenever the reference is made by the President under Article 143 but then one point is very clear there is a commonality between Article 131 and Article 143 which says that it must be related to question of law or question of fact. So one thing is very clear that political questions are not to be taken up even under Article 143, the Court should stay away from examining any kind of political questions.

Other constitutional mechanism which are provided one is Article 262 which provides for an adjudicatory mechanism for addressing inter-State river water disputes through a law made by Parliament and Parliament enacts such laws where Parliament constitutes a Tribunal for resolving inter-State water disputes. We know very well that Tribunals like Cauvery Tribunals are being established by parliamentary legislation. Then Article 263 where we have a forum called Inter-State Council that has also been interested with the power to resolve disputes but then we do not have any instance till date where Inter-State Council has been asked to take up the dispute between the States or between the Centre and the States but then this is an important provision and I believe certain differences which are not aggravated they can be taken up before the Inter-State Council because such resolution such differences can be effectively resolved through Inter-State Council through this kind of forum because this kind of forum has got a representation from all the States and Prime Minister is heading it. So if resolution happens from this kind of forum then it will have better tenability. A new forum has also come into existence that is known as GST Council which again is related to taking up the matter pertaining to GST related issues where Article 279A(4) (h) read with Article 279A(11) can be taken up before GST Council. GST Council again is an important body to look into the Centre State relation particularly on a matter which relates to fiscal dispute which relate to the matter on which GST

has been framed, on which GST has been all the subject matters which has brought within the ambit of GST.

So this is again another important constitutional mechanism which is provided under the Constitution. When you look at the language of GST Council it gives a very broad kind of jurisdiction it says that GST Council shall make recommendations to the Union and the States on any other matter related to the goods and services taxes as the Council may decide. So the provision gives a very broad power to the GST Council to decide the issues including the Centre State dispute relating to GST relating to goods and services tax. Article 279A(11) says that GST Council is established a mechanism to adjudicate any dispute between the Union and the States and the Union and the States on one side and on one or more States on the other, or one or more States on the other side. So GST Council has also been given a jurisdiction to look into Central State relations it will be interesting to see that how this jurisdiction how this jurisdiction is going to get decided exercised in future because GST has already come into play and it is making a considerable impact on the Central State relations and in fact the Supreme Court has already decided that the recommendation of the GST Council shall not bind the legislature that is what the Supreme Court has decided in Mohit Minerals Case.

So with that decision it would be interesting to see that how GST Council is deciding on the conflict which comes before it and how such resolution is accepted by the parties in order to give more respect to this newer institution which is called established to resolve the Centre State relation. These are the references for this module. Thank you very much.