

The Task of the Ninth Finance Commission - The Planning Commission Tangle

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When thinking of the relationship between the Finance Commission and the Planning Commission in the Indian context, certain historical and constitutional facts need to be emphasised. The Indian Constitution does not use the word 'federal', and the relationship under the present provisions has been dubbed as quasi-federal and sometimes even as almost unitary. But the nature of the Indian polity itself compels the Indian union to be a federation of States, however powerful the Centre has been made under the Constitution. One of the essential requirements of a federal relationship must be assumed to be that the federal government as well as the constituent units should have a status of a certain basic quality. This implies that the constitutional scheme must be so understood and operated that, for their normal functioning, neither the federal government nor a State government should have to depend on the other's goodwill.

In the scheme of federal finance this implies that the financial resources must be so distributed between the federal and the State governments that each will have the potential of enjoying adequate resources for the expenditures involved in carrying out the functions allotted to them. Because it is impracticable to make a clearcut allotment of financial resources the device of the Finance Commission has been used in the Indian Constitution for periodically deciding how the finances

raised by the Union government are to be distributed among the States. For obvious reasons, the most flexible and potentially the most important sources of finance have been put in the Union list. Thus the revenues collected by the Union government are normally expected to exceed the amount which the Union government would require to carry out its own functions and the State governments should be assured of their share in such revenues on the basis of the recommendations of the Finance Commission. This is expected to ensure that the States are certain about the amounts that they may expect as their share from the revenues raised by the Union government; they do not have to depend upon the convenience and the goodwill of the latter.

When the Constitution made provision under Article 282 for both the Union and the States to have the authority to make "any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be may make laws", this was put among "Miscellaneous Financial Provisions", and was not thought of as the main or even a principal provision to ensure the appropriate financial relationship between the Union and the States. As is well-known, provisions of that kind were out in Sections 268 to 281, and were included in the sub-chapter with the title "Distribution of revenues between the Union and the States".

The possibility that economic planning will be taken up as an important activity under the new Constitution was not ignored by the Constitution-makers. A specific provision in the concurrent list was made for "economic and social planning". Mr. M.R. Masani has written¹ that at one stage of the constitutional discussions Jawaharlal Nehru had thought of putting this item in the Union list but after further thought and when a number of members stressed the importance of this item being under the jurisdiction of both the Union and the States, it was decided to put it in the concurrent list. Even though the Planning Commission was constituted a few months after the Constitution was promulgated it is not as if the

idea of organising such a body came up only then. The Advisory Planning Board had already reported in 1946 the importance of organising development planning in the country and alternative ways in which this should be done were already under consideration. The importance of taking up integrated schemes of development was already being thought of in the interregnum. It would not thus be proper to say that when the provisions governing the financial relationship between the Union and the States under the Constitution were finalised, the possibility that the relationship would be vitally affected by plans of development was overlooked. Such an assumption would make out the Constitution-makers as well as the leaders of government, especially those like Nehru who were keen on organising India's development efforts through economic planning as persons without much understanding or foresight about what development planning would involve.

It is also well-known that Article 282 closely follows Section 150 of the Government of India Act (1953), which section was also placed under "Miscellaneous Financial Provisions". The main use which was made of this Section, it is also well-known, was for granting special assistance by the Central government to Bengal in connection with the famine of 1943. Ad hoc grants were also later on given under this Section for purposes like growing more food, post-war development, and relief and rehabilitation. It is thus obvious that this provision, which is virtually repeated in Article 282, was always meant to serve the purpose of ad hoc grants which had to be made for contingencies and unforeseen requirements. If there was any idea that grants on a regular footing were to be made by the Union government to the State governments which would lie outside the scope of the Finance Commission, such a provision should have logically been made in that part of the Constitution which deals with the "Distribution of Revenue between the Union and the States", and surely not under "Miscellaneous Financial Provisions". It is thus not only that the arrangement under which Article 282 is extensively used on a regular basis for making Plan grants to States (which grants have usually outweighed the grants made under the award of

the Finance Commission) is not 'neat', as the ARC Study Team had put it²; many legal experts have also opined that such use of that Article is probably unconstitutional and illegal.

The Advisory Planning Board had not specifically stated whether it would like the proposed Planning Commission to be one created under a special provision of the Constitution, under a status, or by executive order. One of the members, Prof. K.T. Shah, had raised this question and opined that the best procedure would be to establish it through legislation.³ No information is available about why it was decided that the Planning Commission should be constituted merely through an executive order of the Government of India instead of giving it a statutory basis. Perhaps it was thought that as it was a new experiment it would be better if its constitution and organisation were not confined by the straitjacket of a law. But what is remarkable is that even though the Planning Commission has played a very important role in the economy of the country as a whole and its activities have encompassed both the Union and the States, it has continued for almost forty years now on the same basis, a body created by an executive order of the Union government. It is a creature of that government, fully subordinate to it, and therefore subject to the wishes of that government, both in its composition and therefore in the last resort, in the working.⁴

It could not have been anyone's idea that such a body should have a greater say in the transfer of resources from the Union to the States than the Finance Commission, a body specifically charged with this responsibility in the scheme of the Constitution. In practice what happened was that in the early years of planning, not only were all States governed by the same party as was in power at the Centre but the party itself was very much dominated by Jawaharlal Nehru who was both the Prime Minister and also the unrivalled leader of the Congress Party, especially after the death of Sardar Patel. With Nehru as the Chairman of the Planning Commission and taking keen interest in all the important decisions relating to planning, there was little prospect that the States would object to an

arrangement under which an extra-constitutional body like the Planning Commission should decide on the devolution of finances from the Union to the States even though, as these grants were conditional, this arrangement forced the States to adopt policies and projects relating to State subjects as directed by the Union authorities. It should also be said that a genuine attempt was made both by Nehru himself and by the Planning Commission to have a dialogue with the State governments at various levels so that a consensus could be evolved about such matters. Institutions like the National Development Council - and its sub-committees - and Programme Advisors (later called State Plan Advisers) were developed and carefully used for this purpose. Of course if persuasion did not work, the fact that a large part of the plan resources of the State came by way of conditional assistance from the Union government always did.

The fact that the Planning Commission was established even before the First Finance Commission was constituted, and the First Five Year Plan was promulgated with its own scheme of plan grants to the States even before the first award of a Finance Commission, surely had some impact upon the relationship between the two Commissions as it came to evolve.⁵ The political reality of all the States being for long under the same party as ruled at the Centre also surely influenced the approach that the successive Finance Commissions took regarding this relationship.

Even then, dissatisfaction about this arrangement gradually became pronounced. Many State planners felt that there was very little scope for planning at the State level in view of the manner in which the twin instruments of Central assistance and the Planning Commission functioned. "Apart from the imposition of decisions on Plan targets, the States are also many times given the methodology of achieving the objective", it was pointed out, "and departure even from the patterns of staffing etc., are not permitted. In such cases the only option to the States is either to accept Central programmes or reject them. Since each programme carries a subsidy (some

times as much as 100 per cent) from the Centre, the States almost invariably accept such offers, even when these have limited utility and applicability for them. The net result is a growing tendency towards inter-State similarity in the sectoral distribution of plan outlays. There is thus consciously or unconsciously a tendency on the part of the States to follow the national pattern of priorities and Central directions with consequential neglect of their own specific growth capacity and requirements. This may not always be in the best interests either of the country as a whole or of the particular State or States". This was the finding of a Study Team of the Administrative Reforms Commission⁶ which looked into questions relating to the machinery for planning. The Study team pointed out that there had been a growing tendency on the part of the States to adopt a standard pattern of priorities which was the inevitable result of the manner in which Central assistance was administered. "The Planning Commission has very rarely imposed its decisions on the States in a direct way," it was stated, "and yet the Planning Commission's approach to priorities gets generally accepted by the States". The remedies for this state of affairs suggested were: (i) improving the planning capability in the States, and (ii) ensuring that the instrument of Central assistance was so used as to provide a sense of direction to State authorities but not unjustifiably to influence State planning priorities.

The ARC's study team on Centre-State relationship⁷ had suggested that the States should receive block amounts as Central grants and the States should be free to use these amounts at their discretion, except in the case of a few programmes of crucial importance. The study team on Financial Administration⁸ had also recommended that the proportion of discretionary element in Central assistance should be considerably reduced and the untied element increased. This team however went further and recommended a shift from discretionary grants to semi-judicial allocations. To achieve this it suggested that one and the same body should deal with both plan and non-plan assistance. It recommended for this purpose the creation of a permanent Finance Commission with a Vice-chairman who would also be a member of the Planning

Commission, the Chairman and other members being appointed for a period of six months or so when the award was to be given. Another institutional innovation suggested by this study team was the creation of a National Development Bank for channelizing long term finance for large and identifiable projects.

The period between 1964, when Jawaharlal Nehru died and 1969 when the Fourth Five Year Plan was finalised was a kind of period of transition in the planning process as well as Centre-State relations. The Planning Commission itself initiated an examination of the whole matter in consultation with the States. This resulted in a number of changes. The number of Centrally sponsored schemes was drastically reduced and the procedures for assistance simplified. But a feeling continued among many States that these changes had not gone far enough. The fact that parties other than the one in power at the Centre were in power in a number of States for some time after 1967 also led to a further assertion by the States that this matter needed more drastic changes. As a result, the Planning Commission decided that the number of Centrally sponsored schemes was to be further reduced so that the outlay on such schemes was not to exceed 1/6th of the Central Plan assistance to States. The bulk of the assistance would be through block grants subject only to the condition that outlays under certain specific programmes and schemes were not to be diverted and further, that the States fully meet the target relating to total Plan outlay as approved by the Planning Commission. It was also decided, in what came to be known as the Gadgil Formula, that 60 per cent of Central plan assistance to States was to be allocated on the basis of population and 30 per cent keeping in view particular aspects of individual States; 10 per cent was to be distributed among six States having per capita incomes below the national average. These modifications certainly helped to remove some of the glaring anomalies which had arisen in the period since the beginning of the Plan era. But there was no real change in the basis of the relationship between the Centre and the States. The two State governments governed by leftist United Fronts in 1969-70 had suggested a drastic reduction in the size of the

activities, if not abolition, of Central Ministries such as Agriculture which dealt with subjects in the State list. They had also taken the view that the Central share of overall Plan outlay should be decreased and the States' share increased. This proposal was not accepted either by the Planning Commission or by the Central government. The proposal to create a National Development Bank was also not accepted. The idea of a permanent Finance Commission was apparently also ruled out. But what was accepted was the creation of a link between the Finance Commission and the Planning Commission through the appointment of one member of the Planning Commission also as a member of the Finance Commission whenever it was constituted. These changes helped reduce the dissatisfaction felt in the States. It was also hoped that these changes would set up a trend in Centre-State relations towards greater decentralisation.⁹

But with the ruling Congress securing a majority not only in Parliament but also in a number of States in 1970-71, this trend was reversed and the earlier tendency towards centralisation again began to assert itself. In the interregnum of the Janata rule between 1977 and 1980, the Planning Commission again made efforts for decentralisation. But the centralising tendency reasserted itself in 1980 and has continued since then. There has also been a more pronounced tendency to appoint party political personalities as the effective heads of the Planning Commission, thus taking away whatever the impact of keeping non-political expert personalities in that position was. The Planning Commission is now seen to be quite openly an organ of the Union government, subordinate to its will and with no pretensions to having a federal and non-partisan character. Though the Gadgil Formula (albeit with some modifications) continues to hold sway regarding Plan assistance, there has been a persistent reassertion of the trend¹⁰ towards Centrally sponsored schemes and discretionary assistance is becoming important, in the distribution of which political favouritism as well as the use of finance to influence policies becomes possible.

An important effect of the financial arrangement made in the Indian Constitution and as it has evolved in practice has been that the Union government appears to have available to it more resources than are strictly necessary for carrying out the functions assigned to it under the Constitution. Instead of this surplus revenue being devolved to the States through the award of the Finance Commission, a practice which would create a kind of right among the States for their share of the common revenue, the devolution taking place through Plan grants created the illusion that the Union government was being specially helpful if not generous to the States.¹¹ The Finance Commissions have also fallen in line with this approach, the result being that the Union government has developed a tendency to undertake excessive expenditures and also to take up functions which are really within the State list. Two or three illustrations will indicate how this has been happening.

The emoluments of government employees constitute a very substantial part of public expenditure. The rates of emoluments fixed by the Union government for its own employees unavoidably have repercussions not only on the rates which the State governments and local authorities have to pay but also upon the rates which organised employees everywhere expect and demand. It is true that there is no Constitutional or legal reason why employees of the State governments should receive emoluments equivalent to their counterparts serving the Union government; but with the increasing unionisation of employees, any upward increases in the emoluments of any major category of employees cannot but induce a similar demand from all the others. Because of various historical reasons, payscales in the Union government have set the pattern for the emoluments of almost all categories of organised employment. In pre-Independence days, government employees, especially those at the middle and higher levels, enjoyed emoluments which were conspicuously higher than those of their counterparts in non-government employment. The public service emoluments also had no clear and logical relationship with the normal income in other walks of national life or with the national per capita

income. The top-heavy character of these emoluments had been criticised by the critics of foreign rule,¹² and especially by the leaders of the Indian National Congress throughout the pre-Independence period. Under Mahatma Gandhi's leadership, it had been decided that one of the major changes after Independence would be to bring the emoluments of government employees into a more logical and reasonable relationship with incomes in other walks of life, efforts being specially concentrated on reducing the gap between the highest and the lowest as well as bringing the lowest into a reasonable relationship with the per capita income in the country. We have had four Pay Commissions since Independence which have examined this matter on behalf of the Union government; and the emoluments of the Union government employees have been continuously revised upwards as a result of their recommendations. Analysis of available data shows that the emoluments policy of the Union government, far from fulfilling the expectation raised in the pre-Independence period, has belied them. While the gap between the highest and lowest in government service has been gradually reduced, the relationship between the remuneration of government employees and per capita income continues to be loaded in favour of government employees.¹³ The emoluments policy of the Union government has increasingly come to form the basis for determining the emoluments policy of the State governments, local authorities, public sector enterprises, educational institutions and many other avenues of employment in the country. The result is that a very substantial part of the revenues raised by public authorities, whether at the Union or any other government level,¹⁴ are eaten up in paying an increasing number of employees, thus leaving a much smaller than appropriate part for other necessary expenditure, whether for developmental, social service or other essential government functions. The Union government has been able to be generous to its employees only because it has not seriously felt the constraint of inadequate financial resources. In turn, this has also made the position of State governments and local authorities difficult. The latter have willy-nilly to bring the

emoluments of their employees on par with those of the Union government employees and this makes their financial position very precarious.

It should also be noted that the increases in the emoluments are effected without any previous full-scale examination of the effects of such a change on the personal income structure in the organised sector of the economy, its expenditure and savings implications, and the resulting impact on the rate and pattern of economic growth. The Planning Commission has hardly any say in the matter while the Finance Commissions have merely to accept the financial implications of the change as a fait accompli.

The Union government spends large amounts on areas of activity which are either put in the State list under the Constitution or, even when they are in the concurrent list, the main part of the work has to be carried out in the States' sphere. In subjects like agriculture it is obvious that most of the development activity has to be undertaken by the State governments, Union government activities being functionally useful mainly in aspects like research and coordination. The same can be said even about an activity like education. In this case, if priorities are rightly observed, the State governments will have to undertake the main responsibility not only in primary and secondary but even in university education; and in effect, this is what happens. The Union government should really confine itself to research and coordination and perhaps to a few special activities of all India importance such as institutions for the comparative study of different Indian languages, or anthropological and archaeological studies of a country-wide character.

What one finds, however, is that not only does the Union government maintain full fledged Ministries with all their paraphernalia for these and similar other subjects, but it also attempts to compete with the State governments by setting up certain institutions of its own which enjoy facilities - thanks

to the munificence of the Union government - which are far better than any that the State governments can provide. The so called Central universities thus have per capita government grants which are far larger than those enjoyed by the State universities which form the large majority in the country. It is not even as if the institutions supported by the Union government necessarily attract the best candidates from all over the country. While such a claim can perhaps be made about the Indian Institute of Technology, it can hardly be made about the Central universities such as those at Delhi, Varanasi, Aligarh or Hyderabad. Experiments of a doubtful character like the Navodaya Schools can be undertaken - and practically forced on the State governments - only because the Union authorities have little constraint about funds for pursuing their hobby horses. The Union territories appear to be able to incur per capita much higher expenditure for developmental as well as social welfare services as compared to even the more prosperous States; and it cannot be said that there is any special reason for such higher expenditure because of the backwardness of the population there or any other such special characteristics.

The very fact that for subjects which cannot but be for the most part, and in fact are, the responsibility of the State governments, special departments and Ministries are created at the Union level, makes it possible both for the political and bureaucratic persons incharge to take up fancy activities which should have low priority in a poor country. The manner in which massive expenditure was undertaken in connection with the organisation of the Asian Games some years back is a good example of this. Probably more expenditure was undertaken in connection with this activity, most of it in and around Delhi, than the total expenditure undertaken for the encouragement of sports throughout the country over a long period, maybe since Independence. Such extravagant expenditure becomes possible only because of the wrong turn which the whole question of distribution of revenues under the constitution has received right from the time of the First Finance Commission.

With the Ninth Finance Commission being specifically given the task of applying 'normative standards', it can, in spite of the limitations of time, go into such matters and indicate what expenditures can be done away with in the light of the illustrative examples mentioned here. There is no reason why it cannot make an assessment of what can be saved if some of these uncalled for activities are curtailed to the minimum and assume that these amounts will in fact not be a necessary part of the Union government's expenditure in the coming years.¹⁶

The expenditures incurred by the Union government on its special subjects and especially on security and defence, pose a different problem. These expenditures have been rapidly increasing year by year and little detailed scrutiny is exercised over it either through Parliamentary debates or committees. The government is usually able to get away with one-line explanations like not compromising with national security. It will obviously be difficult for a body like the Finance Commission to adopt any but a broad normative standard like proportion of security expenditure to national income as compared to other countries; and even then it will be quite a difficult task. But if the Commission makes some effort in this direction and exposes the problems as well as the implications of the present trend for the public to see, it will have served an important public purpose.

In addition to the question of the propriety of certain expenditures incurred by the Union government, many other difficult issues like the price policy of important public enterprises - mostly under the Union government - have an important bearing on the question of Union-State financial relations. There are conflicting considerations like the importance of generating surpluses on the one side, and the impact of higher prices on the expenditures as well as potential tax resources of the State governments on the other. It may be difficult for the Finance Commission to sort these out fully.

Another aspect of the Centre-State financial relation-

ship which would be difficult for the Finance Commission to do anything much about is the essentially inadequate financial resources allotted under the Constitution to the States. The possible criticism that a potentially flexible source like agricultural income tax is hardly fully exploited by the States can be answered by the counter-criticism that surely the Government of India does not ignore the political implications of whatever financial measures it adopts or does not adopt. The fact that under the Constitutional scheme the States are loaded with very capital intensive responsibilities such as looking after most of the economic as well as social infrastructure, and also bear the full impact of natural calamities, is well known. Would the Finance Commission be entitled, under the new terms to go into matters like the inclusion of upto now not shared revenue sources like corporation tax being shared or - like in the USA - certain commodities being exempted from Central Excise so that they can become good sources for States to tap. On the other hand, the Commission being asked to examine the feasibility of the merger of additional excise duties - in lieu of sales tax - with basic duties can create a difficult precedent.

Another important issue is about the proportion of Central assistance to be given in the form of loans and grants. With the States being responsible for meeting all difficult burdens including natural calamities like floods and famines, the indebtedness of the States to the Centre goes on mounting. What we now find happening is that the resulting interest payments to the Centre have escalated to an extent where these more than wipe out the non-plan grants which have mainly resulted from the awards of the previous Finance Commissions. In fact, it can be seen that the repayment of loans and advances plus interest payments to the Centre take away around one third of the total grants and loans - and over two third of the new loans - which the States obtain every year from the Centre. One does not know whether the Finance Commission can suggest a scaling down of some of these large repayment obligations or a kind of moratorium on interest and whether the Government of India will accept any such recommendation. Otherwise in the case of quite a few States, unless the Finance Commission can show

very special favour in their case, their net gain by way of loans and grants from the Centre would make only a little net addition to their financial resources.

An important limitation arising out of the Constitutional Scheme is the control over the Reserve Bank of India being exclusively in the jurisdiction of the Government of India and no convention having been established to ensure that the RBI genuinely operates as an autonomous agency. The result is that the Central government can go on indulging in deficit financing on a large scale without any check being exercised by the RBI while it can exercise such control in the case of States. There is now a persistent tendency for the Central government to indulge in deficit financing even for balancing its revenue account, and thus its indebtedness has gone on rapidly mounting. How much a State government is to be permitted to borrow is a matter decided entirely by the RBI which is an agency subordinate to the Central government. The Central government also is able to obtain far more accommodation from the banking system which is also directly under its control. The investments by various semi-government organisations are also loaded in favour of the Central government, and now Central government enterprises. The Government of India itself obtains revenue from special sources which are not available to the State governments. The loans which are obtained from foreign aiding organisations usually carry very concessional rates of interest but a large part of the benefit of this accrues to the Government of India even if the loans are meant for development schemes in the State sphere. Moreover, only 70% of the amounts obtained are passed on to the State governments. In all these matters, the State governments are handicapped. The Finance Commission will have to deal with such matters or at least keep their implications in view when making its recommendations. It may perhaps recommend the creation of an Inter-State Loans Council which will guide the RBI in its policy regarding market borrowing by the Union and the State governments.

This is related to the big question about the Planning

Commission itself being a body which continues to be entirely subordinate to the Central government. With Plan grants and loans forming such a large chunk of the resources transferred from the Central to the State governments, the fact that the Planning Commission is not genuinely a federal body has been increasingly seen to be a handicap in the smooth functioning of Centre-State relations in the matter of development planning and financing. There is no doubt that until that position can be thoroughly re-examined and revised there is little that even a well meaning Finance Commission will be able to do in the matter of ensuring better financial justice to States. Moreover, the Union government has upto now not only failed to create a body like the inter-State council envisaged by the Constitution, but not even developed a convention that the State governments - or a body like the National Development Council on which they are represented - will be consulted before the Terms of Reference of the Finance Commission and its composition are decided. After all, the States increasingly look to a statutory body like the Finance Commission to do them justice rather than to the Planning Commission. That is why this is so important.

One hopes that the Finance Commission will at least raise these issues; and, in the light of its own experience and studies as well as the representations made to it, once again point out how important a basic change in the nature of the Finance Commission would be. The question about a part of the Finance Commission being made a permanent one will have to be brought up; and so also that about the anomaly of a substantial part of the Centre-State financial relations being dealt with by a non- statutory Planning Commission.

At the present crucial juncture in the Union-State relations situation, the proper approach to the work of the Finance Commission can be to expect it to use the best norms and judgements it can devise to work out what the Union and the States can raise and what they genuinely need to spend in relation to their own appropriate functions as laid down in the Constitution. It will be only proper that it should suggest

expenditure norms which the Union government should adhere to - accepting a period over which such a change can be brought about - and recommend the distribution of a large part of the amount that is to devolve on the States to be distributed under Section 280,17 reserving Section 282 grants for disasters and other such unexpected events.

An important and very useful fallout of such an arrangement will be that the Planning Commission will then have to become a genuinely expert advisory body. It will have no clout of 'Plan-grants' to enforce the pattern of development schemes and approaches which it and the various Union Ministries think appropriate for all the States to follow. Only on the basis of its genuine expertise will it be able to influence State governments and not through the financial clout. To the extent that enforcing some degree of uniformity is necessary in respect of certain areas of development, a decision will have to be taken to provide authority through a statute under the heading "social and economic planning" in the Concurrent list. The Planning Commission's authority and responsibility would also then come to be more clearly defined.

Notes

1. The Times of India, July 17, 1983.
2. The Administrative Reforms Commission - Study Team on Centre-State Relations, Report, New Delhi, para 4.8. The opinion expressed was that "the legality of the present use of Article 282 can not be questioned. The arrangement, however, though not unconstitutional, is not neat".
3. The Advisory Planning Board, Report, Delhi, 1947, pp. 55-57.
4. A number of recent statements of the Prime Minister, Mr. Rajiv Gandhi about his having 'directed' the Planning Commission to work on the Eighth Plan in a certain manner e.g., on the basis of decentralised district planning - indicate how the Union government assumes that the Planning Commission is entirely a body subordinate to it. No reference to the National Development Council is considered necessary before such directives are given.
5. It is interesting to note that the Report of the First Finance Commission (signed on December 31, 1952) does not make any mention of the Planning Commission or the First Five Year Plan, even though the Planning Commission was established in March 1950, and the Draft Outline of the First Five Year Plan also being finalised and submitted on December 7, 1952. The Plan document however, mentions that "a reappraisal of State finances will be necessary in the near future, particularly in the light of the recommendations of the Finance Commission". It further states, "the whole scheme of Central assistance, as now worked out, may have also to be readjusted in the light of the recommendations of the Finance Commission". The First Five Year Plan, pp. 54-59.
6. The Administrative Reforms Commission - Study Team on the Machinery for Planning: Final Report (Delhi) 1968, p. 87.

7. Op. cit., paras 2.10, 2.32 and 2.33.
8. The Administrative Reforms Commission - Study Team on Financial Administration - Report (Delhi), pp. 79-85.
9. For a resume of the developments in this field upto 1969, see this author's "Centre-State Relations in Planning", Indian Journal of Public Administration, Vol. XVI No. 1, January-March 1970 (also published as a IJPA Reprint).
10. See - "in 1979, on N.D.C.'s recommendation, it was decided to transfer 72 schemes to the State Sector and retain only 75 schemes. But during the Sixth Plan period, these schemes have again multiplied from 75 in 1980-81 to 201 in 1984-85. In the Seventh Five Year Plan, a total of 262 Centrally sponsored schemes have been included..." Government of India - Commission on Centre-State Relations, Report, Part I, (1988), p. 375.
11. It has thus sometimes been claimed by spokesmen of the Union government (including Prime Ministers) when commenting on schemes taken up by State governments - especially with reference to those controlled by other political parties - that whatever was being done was only possible because of Central funds.
12. See D.R. Gadgil: "On Salary Levels - The Salaries of Public Officials in India; Memorandum on Scales of Salaries; Ex-colonial and New Income Differentials in India," in writings and speeches of Professor D.R. Gadgil in Economic and Political Weekly (Pune) 1981, pp. 106-166.
13. Date given by the Second Central Pay Commission indicates changes in disparity ratios as follows: (lowest paid against highest paid cadres):

	1939-40	1947-48	1951-52	1957-58
Starting salary	43.4	6.9	5.4	5.1
Maximum salary (after income-tax)	257	38	31	28.5

(Report, pp. 78-79)

To look at the matter another way, the minimum payment in Central government services in 1950-51 (including D.A.) was Rs 780/- and the maximum Rs 36,000 p.a. (excluding ICS and other pre-independence services); i.e. the maximum was 46 times the minimum. Now (1987-88) it is Rs 10,860 and Rs 96,000 p.a. (excluding a few special posts where it is Rs 1,08,000); thus the maximum is 8.8 times the minimum.

As compared to per capita NNP at current prices, the minimum in Central government service was 3.17 times in 1950-51 and 3.28 times in 1987-88; the maximum was 36.6 times and 32.2 times in respective years. (per capita NNP pertains to 1986-87, and is based on the new series).

14. Data about wages and salaries as proportion of total expenditure for the Central government is as follows:

	1985-86 Accounts	1986-87 R.E.	1987-88 B.E.
Administration	9.6	10.0	10.5
Departmental undertakings	26.9	29.6	28.6

(Data from An Economic and Functional Classification of the Central government Budget, 1987-88, pp. 9-10).

According to another source the proportion of expenditure on wages and salaries to total was 19% for the Central government, 30% for the State governments and 29% for the Union territories in 1975-76. (Anand P. Gupta: "Who Benefits from Government Expenditure in India?" quoted in Basic Statistics relating to the Indian Economy, Vol. 2 / States, Centre for Monitoring Indian Economy, Bombay, 1982, Table 16.7.

15. The following data should be instructive in this regard:
Per Capita Central Plan Assistance (Rs.)

	1987-88 R.E.	1988-89 B.E.
States	135.68	132.44
Union territories of which	731.77	784.18
Pondicherry	789.50	891.66
Chandigarh	987.44	1035.55
Delhi	870.32	987.10

(Calculation based on 1981 Census figures).

16. See George K.K. and Gulati I.S. - "Central Inroads into State Subjects: An Analysis of Economic Services; Economic and Political Weekly, April 6, 1985, pp. 592-603. The Sarkaria Commission has pointed out that the Union government incurs substantial expenditure on the subjects included in the State list; e.g. agriculture, rural development, cooperation, education, health, etc. It points out: data show that the Central Plan Outlay during the Sixth and Seventh Plans on some of such items was very large; e.g., agriculture 43.0% and 38.4%, rural development 43.1% and 54.0%; village and small industries 51.9% and 46.7% social services 31.7% and 35.35, for the 6th and 7th Plans respectively. See - Report, op.cit; pp. 281, 375-76, 399-401.

A rough calculation made by the present author suggests that from the budgets of Union Ministries and departments like Agriculture, Rural Development, Irrigation and Flood Control, Industry and Minerals, General Education, Technical Education, Sports and Youth Services, Women and Children, and Environment and Forests, large proportions can be cut as unnecessary for the purposes of carrying out essential Central functions in respect of these activities. The cut can be of the order of over Rs 1,600 crore (based on R.E. for 1987-88 and B.E. for 1988-89).

Round Table Discussion on Legal Issues

Dr. A Bagchi: Two sets of legal issues have been raised by the terms of reference of the Ninth Finance Commission. The first group of issues focuses on the question whether the Constitution authorises the President to lay down guidelines, mandatory or indicative, for the Finance Commission. If the answer is 'No', can the Finance Commission ignore such guidelines or directives?

The next set of issues revolves round the interpretation of the Constitution arising out of the enlargement of the Finance Commission's jurisdiction and the transfers contemplated under Articles 275 and 282 of the Constitution. The respective roles of the Finance Commission and the Planning Commission call for consideration, because it needs to be determined whether the substantial transfers being made through Article 282 are permissible under the Constitution.

Briefly, the questions that need to be answered are: First, does Article 282 permit transfer of funds by the Centre to the States or by one State to another for specific public purposes only as a residuary head of transfer, as the marginal heading of the Article suggests? Or does it enable the Centre and the States to make transfers freely for

purposes outside their respective jurisdictions, as defined in the Constitution?

Secondly, Article 280 3(b) of the Constitution enjoins on the Finance Commission to make recommendations on the principles which should govern the grants-in-aid of revenues of the States out of the Consolidated Fund of India. Grants under both Articles 275 and 282 come out of the Consolidated Funds of India. Can it therefore be argued that the Finance Commission can recommend grants-in-aid under both these provisions?

Thirdly, does Article 275 authorise general or untied grants or does it also permit specific or conditional grants?

Lastly, can grants be given under Article 275 for capital purposes also?

Justice A.S Qureshi : Notwithstanding the Constitutional provisions, it seems that certain aspects were either not given due emphasis or certain assumptions were made or some aspects were taken for granted. It is necessary to ascertain the exact scope of the various provisions of the Constitution for the work of the Finance Commission.

The founding fathers of our Constitution were careful to see that so far as the fiscal relations between the Centre and States were concerned, there should be an impartial body like the Finance Commission to consider all relevant aspects, because in a Union of States harmonious relations are essential if it is to remain united. It was for this very important relationship between the federating States and the Union that the institution of the Finance Commission was contemplated. It

is necessary to understand the significance of the Constitutional provisions so that the purpose for which the provision for the Finance Commission was made is achieved.

Mr. K K Venugopal: The controversy regarding the powers of the Union, that is, the Central Government, in regard to the transfer of resources from the Centre to the States without the intervention of the Finance Commission dates back to 1950 and may be attributed to the conflicting opinions regarding the interpretation of both Article 275 and Article 282 of the Constitution.

There were provisions corresponding to both Articles 275 and 282 of the Constitution in the Government of India Act 1935. It was not a live issue then as the transfer of resources had to be effected out of the Consolidated Fund of the Federation under the Government of India Act 1935, and there was no authority like the Finance Commission to recommend and monitor such transfers of resources. The quasi-federal structure of the Constitution which was fashioned from the 1950 Constitution called for control over the transfer of funds to maintain parity among the States, and between the States on the one hand and the Centre on the other. The founding fathers of the Constitution, thinking it essential that the States should not be made to depend upon the munificence or the arbitrary will of the Centre, evolved a scheme consisting of Articles 275, 282 and 280 (3). Article 280 provides for the setting up of the Finance Commission as a constitutional authority which 'shall' make suitable recommendations to the President in regard to (i) the devolution of taxes under

the various Articles, namely, Articles 268 to 272 and (ii) the principles which should govern the grants-in-aid of the revenues of the States. Thus was brought into existence what could be considered a term of art, namely, "grants-in-aid of the revenues" though the same phrase finds a place in the corresponding section of the Government of India Act 1935. Unfortunately, the phrase 'grants-in-aid of the revenues of the States' was defined under Article 366 of the Constitution, which defines various terms of art. Therefore, a wide area of discretion was thrown open to those who were given the duty of interpreting the relevant Articles, that is, 275 and 282.

The effective result of the official interpretation has been that the area of jurisdiction of the Finance Commission which is to recommend grants-in-aid of the revenues of the States, has been progressively reduced while the vast reservoir of discretionary power claimed by the Centre under Article 282 has been progressively enlarged. As a consequence, only a small proportion of the total transfer of resources from the Centre to the States now comes under the purview of the Finance Commission. One is concerned with the legality and constitutionality of this situation.

In my opinion, the practice which has been followed so far is contrary to the Constitutional provisions. This is the result of two processes. One is construing Article 275 of the Constitution in a restrictive or limited fashion so as to cover by the phrase 'grants-in-aid of the revenues of the States' only general grants of a revenue character, non-

Plan expenditure and untied grants. Thus, grants on capital account and grants to cover Plan expenditure are outside the ambit of Article 275. Then where would the Plan expenditure be covered? This question has led to the second process that is, of reading more into Article 282 than is warranted. Article 282 is supposed to provide the solution to the problem. It says "The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws". This has been interpreted as a residuary power which would enable the Union at its discretion, without any control from the Finance Commission or any other authority, to transfer resources to States as it desires, for Plan expenditure and for special purposes, which are tied grants in the sense that the Centre would be able to monitor such transfers or the actual incurring of such expenditure.

This approach would cause an imbalance in the quasi-federal structure of the Constitution because the various States which need funds would have to rely on the goodwill of the Central government for financial help. If the States are ruled by opposition parties then further complications may arise in the transfer of such funds for special purposes.

External aids for the interpretation of the Constitution are resorted to only if the wording of a particular Article is ambiguous. Article 275 has two provisos which use the phrase "grants-in-aid of the revenues of the States". It apparently interprets this phrase

by setting out what expenditure or grants would be covered by it. The first phrase states that "there shall be paid out of the Consolidated Fund of India as grants-in-aid of the revenues of a State such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes...."

What does this mean? A proviso does not add a new area to an existing provision; it only carves out an area from that covered by the main provision and gives it special treatment. It therefore follows that besides covering grants for capital and revenue expenditures for the purpose of promoting the welfare of the Scheduled Tribes, etc., the main provision also includes grants of both capital and revenue nature for special development schemes.

Thus all Plan expenditure special purpose grants, tied grants, etc. would come within the scope of Article 275(1) itself. And if this is so, the practice which has been adopted by the Government of India during the last few years or from the very inception of the Constitution is not in accordance with the Constitution, in fact it is unconstitutional.

Examination of Article 282 of the Constitution also leads to the same conclusion. The study team of the Administrative Reforms Commission and others have ignored the non-obstante clause with which the Article ends - "notwithstanding that the purpose is not one with respect to which Parliament or

the legislature of the State, as the case may be, may make laws". This Article, without the non-obstante clause, simply means that the Union or a State may make grants for any public purpose. The question arises, was it necessary at all to have an independent provision in the Constitution declaring that the Union and the States may make any grants for any public purpose? That power is always there as part of the executive power of the State. The need for this particular Article arose because there is a quasi-federal distribution of legislative powers under our Constitution; between the Centre, which is autonomous in the areas which are allotted to it and the States which are equally autonomous in relation to the areas which are allotted to them. Their respective jurisdictions are spelt out by a detailed division of topics. Thus there are List I and List II, which are exclusive subjects, and the Concurrent List III. Therefore, a constituent State cannot legislate in regard to Posts and Telegraphs, nor can a State by reason of its legislative or executive power make a grant to a welfare institution run for or by say, the Posts and Telegraphs department. It became necessary to lift this bar so that both the States and the Union could mutually make such grants to the State institutions by the Union and vice versa, or by one State to another State. Article 282 serves this purpose.

If Article 282 conferred only a residuary power (residuary to Article 275 of the Constitution) why was it necessary to include "a State" in addition to "the Union"? Article 282 cannot be residuary because it visualises that the grantors could be either

the Union or a State and there was no need to bring in a State if this Article was residuary to Article 275. The whole of that area is left by the Constitution to the Finance Commission. The Finance Commission would not be entitled to abdicate its function under the Articles of the Constitution because what binds them is the Constitution, and where the terms of reference to the Commission involve any repugnance, conflict or inconsistency, the Finance Commission would be bound to follow the Constitution as against the terms of reference. In such a case it is doubtful whether this is practicable or whether the Commission would go back to the Government and ask for reconsideration of the terms of reference. But to the extent that any of the terms of reference seek to deprive the Finance Commission of its powers which are constitutionally vested in it under Article 280, Clause 3, the terms would be invalid and unconstitutional.

Mr. A.G. Noorani: It must be reiterated that where the text is clear one need not resort to any external aid, but two facts are important here. The first is that Article 282 occurs under the heading "Miscellaneous Financial Provisions", and has been bodily lifted from the Government of India Act 1935. It is unthinkable that a provision of the magnitude which is now ascribed to it would have occurred under "Miscellaneous Financial Provisions" at all. Secondly, we have the authority of no less a person than Dr. P V Rajamannar, both as Chairman of the Fourth Finance Commission and as Chairman of the Tamil Nadu Centre-State Relations Inquiry Committee, to give due importance to the very significant

marginal note: "Expenditure defrayable by the Union or a State out of its revenues". The "grants" mentioned here really imply expenditure, not devolution.

In the Government of India Act, 1935, this was denoted as subclause 2. Subclause 1 stated that the expenditure could be incurred only within the territory of India, in spite of the fact that India was then a British dependency. Clearly, the significance of these two clauses is to permit expenditure. The non-obstante clause was provided to remove any fetter on expenditure.

The third point is that precisely because of the wide language of this provision, it is not only permissible but also necessary to construe it in harmony with the other provisions.

To illustrate, if a State or a Union can incur expenditure regardless of the legislative distribution, can one envisage the contingency of a State government making grants of a nature which would undermine the Government of India's foreign policy? That kind of expenditure would be unconstitutional despite the width of the language of Article 282 because of the doctrine of harmonious construction. The Constitution has to be viewed in its entirety. As the United States Supreme Court and our Supreme Court have always emphasised, if the Constitution is being expounded, it has to be read as a whole. The question for consideration is "would it be possible for the Union to make grants under Article 282 in a way which would reduce Article 280 and 275 to insignificance?" The answer can only be in

the negative.

The framers of the Constitution fell back on Section 142 and Section 150 (b) of the Government of India Act 1935 in providing for devolution of taxes and grants-in-aid. On the 4th September 1947, Sir N. Gopalaswamy Ayyangar submitted an elaborate list of points on the various issues then under consideration. A crucial passage in Part 3 reads: "Federal grants to units; history during last ten years; principles to guide such grants in the future." Between 1937 and 1947, that pertinent provision which is the counterpart of Article 282, that is, Section 150 subclause (b), enabled the Centre to make grants to the Government of Bengal during the Bengal famine.

To proceed: "Machinery for the distribution, for the determination of such grants, whether it might be the same Finance Commission or a different one". In other words, Sir Gopalaswamy squarely raised the issue whether there should be two bodies or one, and only one body was eventually adopted. This is a significant point; there was to be a single body under the Constitution. Both the Study Team and the Administrative Reforms Commission have also said that the present use of Article 282 for making grants was not, and could not have been, within the contemplation of the founding fathers of the Constitution.

However, going back to the Constituent Assembly debates one finds that there was no discussion on this point and the proposal was just adopted mindlessly. Much has been heard about the inter-State councils,

but this too was accepted in the Constituent Assembly as something incontrovertible. A true study of the inter-State councils is available only in the House of Commons debate and in the report of the Joint Parliamentary Committee on the Government of India Bill.

A detailed discussion on these points was held, however, in the presence of Dr. Rajendra Prasad, President of the Constituent Assembly and the Finance Minister. A strong Centre was being contemplated but it was felt that the provinces should not be made to depend wholly on the Centre for their finances. The expert Committee constituted in October 1947 submitted in its report that "It is necessary to place at the disposal of the provincial Governments adequate resources of their own without their having to depend on the variable munificence of the Centre".

In Paragraph 67 the report of the expert Committee defines the role of the Finance Commission: "The Finance Commission is to be entrusted with the following functions: to allocate between the provinces the respective shares of the proceeds of taxes, to consider applications for grants-in-aid from provinces and report thereon". (Emphasis added).

Paragraph 69 of the same report is crucial: "The Commission's first function would be of the nature of an arbitrator and therefore the Commission's decisions will be final".

It must be conceded readily that this language was not adopted by the framers of Constitution. However, these points mark

the start of a grey zone. The awards of the Finance Commission were not made explicitly binding, but they were not also of the nature of the reports of Commissions of inquiry that could be ignored or shelved. The practice has been to treat them with the utmost respect and to depart from them very, very sparingly. It must be mentioned that on Article 275 the Assembly debate was fairly extensive and even towards its close in October 1949, both Dr. Ambedkar and Dr. Rajendra Prasad felt that although they had done their best, they had left little to the provinces. However, at the point they might not have been aware that Pandit Jawaharlal Nehru was thinking of a Planning Commission. Before the Constitution came into force, in the President's Address to Parliament in January 1950 he mentioned the Finance Commission, though the formal order was made on the 15th March, 1950. The Finance Commission's existence was also mentioned by the Central Finance Minister in his Budget speech on 28th February 1950. These dates have a significant connotation. With the very best of intentions, it was not conceived that the Finance Commission would have the powers which it has now come to enjoy. Therefore to that extent, the present use of Article 282 for Plan transfers is unconstitutional; a large value of transfers was not to be made under this Article. The intention was to have one body which was to receive applications and entertain them and act as both arbiter and monitor. But it so happened that while the Constitution was being enacted, almost simultaneously, the Finance Commission was also conceived by the Government. The first three Finance

Commissions did not have to go into the question of transfers under Article 282. For the Fourth Finance Commission, both the Administrative Reforms Commission and the Study Team agreed on the proposition that "Had the financial provisions of the Constitution been framed at the time when the Planning Commission was in full operation, it is a matter for conjecture whether the determination of the budgetary needs of the States would have been entrusted to two separate bodies".

Mr. Setalvad, in his Tagore Law Lectures in 1973, had observed that the Planning Commission was a political body and could therefore be subject to pulls and pressures. If this is true, clearly it cannot be the body to which transfers to States can be entrusted, least of all transfers under any discretionary provisions.

Mr. K Santhanam, Chairman of the Second Finance Commission, said in his lecture in March 1959 that "There is no purpose in having two Articles (in the Constitution) enabling the Centre to assist the States, one through the Finance Commission and the other by mere executive discretion". In the light of the construction being discussed here, which seems to be incontrovertible, it is clear that there are no two overlapping Articles. One comes under the Miscellaneous head, the other deals with a particular purpose, and it seems to be a gross abuse of power, in a purely legal sense, to utilise Article 282 as a general instrument for Plan transfers or transfers on a large scale. No doubt the transfers are well intentioned, but in the process the Planning Commis-

sion has grown and acquired dimensions which were absolutely unimaginable.

Though given in a slightly different context i.e. the Customs Act, a judgement of the Supreme Court appears very relevant here: "The resources of the Union Government are not meant exclusively for the benefit of the Union activities. They are also meant for subsidising the activities of the States in accordance with their respective needs, irrespective of the amounts collected by or through them". If this is the legal position and the States have a right, then there is no question of either the Centre's munificence or discretion. To revert to the observations of Shri Setalvad, "It is somewhat anomalous that vast resources should be devolved to the States by the Union at the instance of a purely executive body of this character..." He goes on to point out that "the role of the Finance Commission as provided in the Constitution can no longer be revised fully". In other words, Article 280 has been virtually atrophied, "due to the emergence of the Planning Commission as an apparatus for National planning".

As regards the Constitutional status of the Finance Commission, it is not a Commission of inquiry bound by its terms of reference as a body appointed under statute. The terms of reference of the Finance Commission are laid down in Article 280. Once the President makes an order under Article 280 it is like a grant of property with absurd conditions; the conditions are invalid, the grant is valid. Once a Commission is appointed under Article 280, the invalid conditions can be ignored and the Commission

can act under Article 280.

It is obvious that as a body set up under the Constitution, the Finance Commission would be open to the writ jurisdiction of both the Supreme Court and the High Court.

Also, the Government of India cannot lay down any guidelines. The Finance Commission is a quasi-judicial body, advisedly having a judicial member. Under the scheme of the Constitution it is meant to be an arbiter though its decisions regarding devolution of resources are not made explicitly binding on the President. If paragraph 4 of TOR is given its full force, the Finance Commission would become virtually a monitor of the finances of the States.

Justice Qureshi : The Planning Commission does not stop at merely making the Plan grants; it has even made grants for revenue deficits, which squarely falls under Article 275. There is no reason to doubt anybody's bona fides and no reason to think that there is a deliberate grabbing of power by anybody. But at the same time we are all under a duty to find out whether the Constitutional provisions have been properly followed or not, and it is not merely following the letter of the law. The spirit of the law is as much important, because a dead body of law is useless. If we have to survive as a nation, we cannot ignore the spirit of the Constitution. If we do so it will be at our own peril.

Mr. B. Errabbi: Article 280 confers absolute autonomy on the Finance Commission because the Finance Commission is duty-bound under this Article to make recommendations to the

President on the matters mentioned in Clause 3. The first two clauses of the Article relate to the devolution of resources and the principles which should govern the grants-in-aid of revenues. It is only sub-clause (c) of Clause 3 which points to terms of reference by the President to the Finance Commission but it qualifies the scope of the terms as "any other matter". The terms of reference envisaged in this provision are laid down with regard to all matters other than those referred to in the first two clauses. It is thus absolutely clear that the Finance Commission is meant to have absolute autonomy. Thus the terms of reference which have been issued to the Commission are by and large unconstitutional.

The preparatory materials support this view. The sub-clause 3(c) of a provision which was made in the Constitution in its drafting stage is the modified version. That provision read, "any other matter referred to the Commission by the President for the purpose of sub-clause a, b of this clause in the interests of sound finance". The purpose seemed to be to elucidate all matters mentioned in clauses a and b but later the Drafting Committee omitted the expression, "for the purposes of sub-clauses a and b" thereby indicating the intention of the Constitution-makers that 'any other matter' only refers to matters which are not mentioned in clauses a and b.

An important aspect concerning Article 275 is its under-use by the Government evidently because it thought that the article provided only for grants-in-aid of a revenue nature, not a capital nature. But, as pointed out earlier, the main provision must be inter-

preted in the light of the provisos. The provisos have already mentioned both capital and revenue grants. Article 275 is the sole repository of the grants-in-aid of revenues and the Constitution contemplated no other provision. Therefore, whatever grants are to be made by the Centre to the States can come within the purview of this particular provision alone and also only on the recommendation of the Finance Commission. Since Article 282 was adopted without any discussion, its intent remains unclear. However, one important aspect of the provision is that both the Union and the States can make grants, because the word "State" is also used in the provision. It does not seem to contemplate the transfer of resources from the Centre to the States or vice-versa, it only implies that grants can be given by the Centre or by States for any public purpose which is of a private nature. Any public purpose sponsored by other public authorities of the Government and the grants for such a purpose are not contemplated in Article 282. Although this is in tune with the grammatical or literal interpretation of the provision, what transpired in the Constituent Assembly is of interest in this context. The report of the Expert Committee said, "It is clear that during the development stages of the country it will be necessary for the Centre to make specific public grants to the provinces from time to time. The provisions of Clause 203 of the Draft Constitution seems to be adequate for that purpose. While we do not recommend the adoption of the Australian system for our country, we have no doubt that the Centre, when distributing specific purpose grants under Article 203 of the Draft

Constitution, will bear in mind the varying circumstances in different provinces”.

Article 282 was not just meant to be an innocuous provision; it was also intended to be one of the channels for transfer of resources from the Centre to the States.

Ms. Renuka
Viswanathan :

Two points are relevant from the point of view of federal fiscal theory and practice. First, the growth of the federation cannot be restricted by the intentions of the Constitution-makers. For instance, the Australian Constitution had a number of clauses relating to finances but most of them were transitional provisions relating only to the first ten or fifteen years of the Constitution. All the transfers that have taken place in that Constitution were under a residuary clause, namely, the Braden clause. There is no reason why the Indian Constitution should not also be interpreted in line with the growth of the federation over the years.

The second point is that there are several channels for inter-Governmental transfers, such as the legislative process as in the West German Constitution where the Upper House really plays a very important role in determining financial transfers; an objective academic body of experts; a political process and so on. Each of these processes has a certain validity and usefulness and each suffers from disadvantages. So it would not be proper to assume that just because the Finance Commission is a body of experts it would be the best or the exclusive agency for transfer of funds.

Lastly, there can be advantages in utilising

the political mechanism of bodies like the National Development Council or the Planning Commission, assuming that the Planning Commission is not so much a body of experts as a political body.

Justice Qureshi: The question is whether any power which is either sought or exercised has to have any Constitutional basis, whether a point as delicate as Centre-State relations can be left to be determined by some political or other body having no foundation in the Constitution. If it has to be in the Constitution, then there must be a provision for it in the Constitution. If it is not there and if a political decision calls for such provisions, the Constitution can always be amended. But a Constitutional provision cannot be misused. Parliament's power to amend the Constitution has been time and again interpreted by the Supreme Court but the Constitution continues to undergo changes and grow.

Mr. N.K.P. Salve: My query is based on an opinion which we have taken from Shri Palkhivala, who is extremely perturbed that transfers under Article 275 are getting abridged day by day and those under Article 282 are increasing. He thinks that in view of the express language of Article 280 3(b), the duty cast on the Finance Commission to recommend principles for grants-in-aid of revenues is confined entirely to Article 275(1) and not to grants under Article 282. The second view which he has taken is that Article 282 is an additional source of authority for the States and the Union to give grants for public purposes.

Therefore the query would be, can the description of Article 282 as "Miscellaneous Financial Provisions" restrict the full operation of the express language of the Article?

Was it not open to the founding fathers to make what was implied explicit? If it is made explicit, why do we restrict the operation of Article 282? Once a power is given under Article 282 the argument that it is not consistent and does not harmonise with the federal spirit of the Constitution, may perhaps not appeal to the legislator.

Mr. Noorani:

It is not open to the President to lay down any guidelines whatsoever for the purpose of the work of the Finance Commission. Perhaps for sub-clauses (a) and (b) of Article 280 (3) this is true, but will it also apply to (c) in view of the nature of the provision itself where it says, 'any other matter in the interest of sound finance'?

The language is very obvious: Clause (a) is for distribution of taxes, (b) is for principles regarding grants in aid, (c) refers to "any other matter". The President can refer a 'matter' - it could be Plan grants - but 'The matter' is not synonymous with guidelines. Once the Finance Commission is seized of the matter it applies its own independent approach and it is not permissible for the President to fetter its discretion under sub-clauses (a), (b) and (c) as well.

Therefore it seems that considerable controversy has arisen on account of the meaning of "terms of reference". The 'terms of reference' under the Commission of Inquiries Act are quite different, as the Commissions

constituted under that Act draw their mandate from them. The Finance Commission does not have a mandate outside the Constitution. It is brought into being under the mandate of Article 280.

Mr. Venugopal: My entire approach was both based first on a positive interpretation of Article 275 and, secondly, a negative approach according to which Article 282 has no part to play in the matter. If my interpretation of Article 275 is correct, that Article comprehends within its scope the entirety of grants by the Centre to the States on the capital account as well as revenue account including grants for special purposes, in which even both Plan and non-Plan expenditure would be covered by Article 275. Therefore, I do not know whether Mr. Palkhivala has dealt with the provisos which really are in the nature of Articles of the Constitution which interpret a phrase otherwise not defined in Article 366, the phrase 'grants-in-aid of the revenues of the State'. That phrase is a term of art coined under the Government of India Act for the simple reason that there was no high-powered monitoring constitutional authority like the Finance Commission under the Act to maintain the balance between the Centre, on the one hand, and the States on the other and between the one State and the other States. Therefore, in those circumstances, once we come to this conclusion that grants-in-aid of the revenues of the State would comprehend capital and revenue, Plan and non-Plan, special purposes, tied and untied, then where does the question of one's going about searching for any other Article which covers the same area arise?

Article 280 Clause (3) subclause (b) compels the Finance Commission, whether it likes to or not, to recommend to the President the principles in regard to the "grants-in-aid of the revenues of the State", which means every single grant which would come within the compass of the phrase. Therefore it has no choice in the matter. If it has to deal with it and the President has to act on its advice, then the question of the Centre exercising the same power otherwise under any other provision would not arise. Therefore this is a complete answer by itself.

But I have also dealt with the negative aspect of it to explain as to why Article 282 has nothing whatsoever to do with the making of grants exclusively in derogation of the powers of the Finance Commission under Article 275. Article 282 merely lifts the bar which otherwise would prevent the Centre or the States from making grants outside the topics which have been entrusted to them for the purpose of legislation by the Constitution. That is really the answer.

Dr. M.D. Godbole: Reference has been made to the Finance Commission being the only body and it was said that it was more an arbiter than a monitor. In that situation, what is the functioning of the Finance Commission that was contemplated? Is it to be a permanent body, or is it something which is set up every five years to take a look at the issues pertaining to the States?

The second question pertains to the phrase 'any other matter' in Article 280 (3) (c). One would like to know if the Finance Commis-

sion is the sole arbiter and monitor in respect of all matters pertaining to State and Central finances.

The third question is, whether under Article 282 any kind of grant or assistance by the Centre to the States is precluded completely. The impression one gets now is that except in exceptional circumstances and only as a residuary power, there is nothing else which could be given to the States except under the dispensation of Article 275. This itself raises a number of issues which need to be debated.

Dr. H. K. Paranjape: The Finance Commissions have not done all that they could have by way of devolution of finances to the States. With the constitutional scheme that has been put forward in the 1950 Constitution, the interpretation has to be such that the total finances available to the different units, the States and the Union, should be such as to enable them to carry out the functions which have been given to them under the Constitution. The tax sources allotted to them are essentially meant for that purpose but the supplementary provision is really meant to take note of the fact that the Union List contains sources which are likely to be more flexible and more buoyant, hence the provisions for devolution of finances through the Finance Commission. By not taking this approach past Finance Commissions have permitted large amounts not required by the Union for its own functions to remain under the control of the Union Government, which they have then used for providing grants under Article 282 to the States in a manner not at all contemplated and perhaps not even legal.

A historical point which also needs to be mentioned in this context is that when the question of including Planning as one of the subjects in the List in the 7th Schedule of the Constitution was under consideration, Pandit Nehru originally thought of putting it in the Union List. But many members pointed out that it would not be appropriate and so it was put in the Concurrent List. The matter was very much under consideration at the time the final provisions in the Constitution were being made. If the idea was that this would be a body which would work in a manner which would out do the Finance Commission in the devolution of finances, how was it not taken up at all? The idea probably was to make the Planning Commission a body constituted under law with the provision in the Concurrent List but somehow this was not done. The Commission was set up by an executive order and because practically all the States were under one political party with Jawaharlal Nehru as the acknowledged leader, the Planning Commission's functions grew and nobody objected. But an adverse effect of this has been that the States have not obtained from past Finance Commissions the amounts that they would have been normally entitled to from the surpluses available with the Union Government because of the latter's larger tax collection powers. That is why the Union Government has been able to provide conditional grants in the State List, insisting on the particular manner in which the States should carry on the activities in their List - for example, in education (now it is Concurrent) or health or other matters which the Union Govern-

ment normally would not be entitled to do.

Prof. I.S. Gulati: It is very disturbing that Article 275 is so all-pervasive that all grants from the Centre should have been made under that Article and not under Article 282. From the very outset, the First Finance Commission's award covered not more than one-third of what the States even then required. From the States' point of view it has not been a happy position. While they would have liked the Finance Commission to let them have access to resources through tax sharing or through grants-in-aid of revenues as a matter of statutory right, they have had to depend on dispensations of the Commission covering much less than their total commitments, with nothing else to fall back upon.

Article 280(3) (c) whereby any other matter can be referred to the Finance Commission, again raises a few doubts. It uses the expression 'in the interest of sound finance', which really means that not all matters can be referred to the Finance Commission. Who decides the point?

Dr. G. Thimmiah: It is heartening that the mandate of the Finance Commission flows from the Constitution and not from any terms of reference or guidelines provided by the Union. If that is so, Article 280 (a) covers tax devolution and (b) grants. Does it necessarily mean that the Finance Commission should first recommend tax devolution and then come to grants or it can do the reverse?

Justice Qureshi: We do not mean to say that the so called terms of reference could not bind us. Our mandate does not flow from the Presidential Order, it flows from the Constitution and in

the light of the Constitution we will perform our duties. But over and above the Constitutional mandate, if there is anything in the terms of reference it would be only a view point which would be open to us to consider, but we are not bound by anything.

Dr. Raja Chelliah: According to Article 275 of the Constitution, Parliament may determine the grants-in-aid of revenues to be given to the States and provide for that by law. Until Parliament makes such a law, the President can issue an order regarding such grants but he shall not make such an order before listening to the recommendations of the Finance Commission. It seems therefore that it is open to Parliament to legislate grants-in-aid of revenues in addition to what might have been recommended by the Finance Commission. If this is so, the grants that are supposed to be recommended by the Planning Commission could be given a legal status by legislation by Parliament. Would that be in order? The grants, as Mr. Venugopal says, will go under 275 and not under Article 282. But they could be regularised, not sent in as ad-hoc recommendations of the Planning Commission but placed before Parliament and converted into law. Or, if we want to continue the present practices of Planning, should there necessarily be an amendment to the Constitution or, in the alternative, should we abandon the present practice?

Mr. Venugopal : There is nothing in the Constitution which precludes or prohibits a Finance Commission continuing for a period of five years and being replaced by another Finance Commission. Article 270 says that there shall be a Finance Commission for every period of five

years or for such period as may be fixed by the Government. The Finance Commission should continue for a full period of five years, and if it exists for a shorter period for any reason, another Finance Commission should come into existence straightaway so that there is no period without a Commission; in which event its tenure will in effect coincide with that of the Planning Commission. In practice, the Planning Commission covers not only the limited area given to the Finance Commission but a much broader area, but to the extent that the area is given to the Finance Commission, the latter would be the sole judge. In practice, the Planning Commission would first submit its recommendations to the Finance Commission in regard to the devolution of taxes and making of grants under Article 280 and then the Finance Commission would be the sole authority to finally decide what recommendations should be made to the President and therefore to Parliament, in regard to those areas. This is the ideal situation which should be brought about, which would be consistent with the provisions of Article 280(1) and also with the existence of a Planning Commission which has not been brought within the fold of the Constitution and which has not also been brought into existence by legislation.

Mr. Madhava Menon: It seems that what the Constitution-makers really wanted was a permanent Finance Commission but at that time there was not sufficient work for a permanent commission. Now, since numerous complex issues are thrown up and the resources to be distributed between the Centre and the States

are also large, the Finance Commission should be made a permanent body. It could even be a finance-cum-planning commission so that all these issues could be thrashed out and the devolution can take place strictly according to the terms of the Constitution. The members can change every five years as Article 280 demands.

In the present situation where the devolution which has taken place under Article 282 has reached such dimensions as to diminish the status of the Finance Commission and the transfers under Article 275, a Presidential reference under Article 143 is in the public interest. An exposition of the Constitutional intention by no less an authority than the Supreme Court is needed to get a clear picture of the status of the Finance Commission in respect of devolution. It would be in the fitness of things for the Ninth Finance Commission, in view of the controversy that has arisen and the total unconstitutionality of the Plan devolution that has taken place, to request the President to make a reference under Article 143 and get a quick opinion.

Mr. Salve : Is it mandatory for the President to appoint a Finance Commission? Is it not open to Parliament to decide and legislate upon the devolutions both for grants-in-aid and for distribution of taxes?

Mr. Venugopal : In regard to Articles 268, 269, 270 etc., where there is devolution of taxes to the States, there is an express provision. For example, Article 270 says, 'such percentage as may be prescribed shall devolve on the States'. That is in regard to income tax. Here,

'prescribed' means that until a Finance Commission has been constituted, it is prescribed by the President by order after considering the recommendations of the Finance Commission.

Then, 280 Clause I itself says, the President 'shall' within two years of the commencement of the Constitution and thereafter at the expiration of every fifth year, or at such earlier time as the President considers necessary by order, constitute a Finance Commission.

What was contemplated was a continuing body, but in fact, it has been truncated to two or three years and it has been extended from time to time. This is not in keeping with the wording of the Constitution. It will be more appropriate to have each Commission for the full period of five years, so that there is a permanent body with members changing after every five-year period.