Chapter – I

Introduction
Chapter I

Introduction

Federalism is a constitutional mechanism in which powers are constitutionally distributed between and among different levels of government. It is a system of government which allows different communities to exercise guaranteed autonomy over their certain matters of particular importance by ensuring that decisions are made at the most appropriate level. Federalism can be understood as a constitutional model which are mostly associated with multicultural countries as it not only tolerate diversity but also adopts it as an additional value for which the multicultural state stands. Viewed from this position, federalism seems as a guarantor of multicultural and plural society. It is a system of government which constitutionally guarantees and implements a balance of shared-rule and self-rule. Thus, it is a mechanism which foster as well as nurture the diversity of societies by giving different communities not only their rights and liberties but also equip them with more autonomy to develop them according to their proper values. At present, there are about twenty-five countries that meet or claim to meet the basic criteria of a functioning federation and about 40% of the world’s population lives in these federal countries.

There are some features which are very common to most, if not to all, federal countries: the first and foremost feature is that there are two or more than two levels of government. There are a centre government and state government in each federal state. However, if there is a possibility there could be a local government which could make the both easy to function. The next feature is the division of powers between and among central and local governments. This feature contrasted federal system of government with a unitary system of government, in which powers are concentrated at the hands of central government only. Although, there may be small or regional units in unitary systems and any authority vested in them is merely delegated by the central government but it can resume that authority at any time. In contrast, the main feature of a federal state is the separation and division of powers between the central and regional governments under the framework of the constitution in such a way that each of them cannot encroach the powers of another. In each and every federal state ‘constitution’ constitutes the supreme law of the land. It is the source of every power and all federal states derives its existence from this constitution.
The next feature of the federal form of government is a written and rigid constitution. It will be practically impossible to maintain the supremacy of the constitution and division of powers between the central and the state governments unless the terms of the constitution have been reduced into writing. At the same time, the supremacy of the constitution can be maintained only if the method of amendment is rigid which means a natural corollary of a written constitution is its rigidity or controlled type. Though in a rigid constitution, the procedure of amendment is complicated and difficult but it does not mean that the constitution should be legally unalterable. It simply means that such a constitution can neither amendable unilaterally by any of the spheres of government at its will nor the power of amending the constitution should remain exclusively with either the central or the states. Finally, by means of constitutional division of powers between the centre and the regions, disputes may arise as to the proper sphere of power to be exercised. The federal system, therefore, requires an independent and impartial arbiter above and beyond the federal bodies, which decides these disputes. Consequently, this protection of the federal system is vested in the hands of an independent and impartial judiciary in which the Supreme Court is at the apex, which has the final power to interpret and guard the provisions of the constitution in a federal polity. It has final authority to declare that any law made, or act done by them, exceeds the powers assigned to them by the federal constitution, and, in consequence, has no legal validity.

Political scientists have identified some of the drawbacks of a federal form of government as well. They argue that with its division of powers, federalism means weak government, the entrenchment of conservatism and the hampering of state activity by excessive legalism and insufficiently flexible machinery of government. It also means the consequent irritation and weakness in the organs of government which tends to stereotype and limit the development and progress of a new country. Hence, these critics argued that federalism can duplicate government functions and lead to the delivery of overlapping or contradictory policies at different levels of government. Federalism may well have been suited to a particular phase of unification of large continental states of more diversity with small populations and poor communications. However, today by the very rigidity of their constitutions such systems will definitely restrict the scope of national economic planning.
In addition, these critics criticize the two-tiers of federal government which is onerous for businesses that operate across state borders hence causing a duplication of services. Consequently, the complex nature of a federal system can lead to uncertainty as to which level of government is responsible for particular decisions or services. Therefore, these critics accuse federalism of being untidy, messy, chaotic and costly. While federalism has sometime intensified existing differences as well and even failed in some countries. However, it always helped the countries to settle conflicts as well as to improve governance in the present situation. It is a well-known fact that conflicts are inherent element of all societies. Federalism and power-sharing proved an important method from all time that not only has managed these conflicts but also eliminated them properly.

There are few devices by which it has sought to beat all the claims of the critics and to prove that federal government has been sufficiently flexible to be able to adapt itself successfully to changing social, political and economic conditions. Firstly, by broadening the base of power-sharing, federalism creates an opportunities to access the political system at different levels and allows all political groups on the main platform of the federal or national level. In addition, it reduces the burden on the central government and frees it from having to handle much of domestic administration. Secondly, the constitutional division of power and checks and balances associated with any federal system is specifically designed to prevent the aggrandizement and abuse of government power by any one political entity, party or person. Thirdly, guaranteed regional autonomy is the basic minimum condition for federalism. By the use of this method which constitutionally combines self-rule and shared rule, federalism allows different local groups to control aspects of their lives without having to persuade a majority of citizens nationwide. In fact, granting more autonomy to the regional or state governments is one of the most sought methods of the federal system in order to manage or transform of conflict in a democratic society. From this perspective, it will not be wrong here to say that federalism is a right form of government for peoples of multi-national states who wish to be united without being too united. In the mixture of political controversies and political inferences in a country and when political issues have been complicated by the existence of racial, linguistic, political, religious, economic and commercial disputes, federalism has proved an efficacious panacea which has cured all these multilateral ills.
Survey of Literature

The present problem of this research study is very significant in view of contemporary Indian politics. It is useful for the policy makers, political parties and leaders of public opinion in order to know the increasing centralized tendencies and decreasing dimensions of state autonomy and to make changes in the centre-state relations. It is also significant for the teachers as well as the students of Indian federalism to understand the theoretical and practical dimensions of Indian federalism. Thus, the problem of this research work is theoretically and practically very relevant not only to its discipline political science and government policies but also with the present society. Let us now see a selective and brief survey on some of the influential texts on federalism as a broad principle and autonomy as one of its operational instruments which serve as starters for the current enterprise. To make it easy it has been categorized into two sections (i) General theoretical survey on federalism and on Indian federalism, and (ii) specific literature survey on the autonomy of Jammu and Kashmir State.

I. General Theoretical Survey on Federalism and on Indian Federalism

The concept of ‘federalism’ has been a subject of great confusion, misunderstanding and conflicting opinions. Consequently, like many social science ideas and concepts, it became more difficult to define the term federalism. In order to clear the misunderstanding and confusion relating to the concept of federalism with other related terms like – federation, confederation, union etc. many authors and writers have contributed on the subject but the concern is mainly raised by Preston King in his book – “Federalism and Federation-August 1982”. Preston King used an analytical approach to explore the contemporary nature and meanings of federalism and federation. He divided his analysis for federal union into a discussion of ‘federalism’ as political ideology and ‘federation’ as a particular institutional relationship. As an ideology, federalism has been favored by those who seek “unity in diversity” is the more interesting and innovative part of this book. The author successfully explores the problems that have mainly arisen in the description and analysis of federalism and federation. The author does this by applying logical analysis to the necessary elements in the discussion of federalism as the expression of a political ideology or ideologies and federation as an institution or pattern of
institutions. The book starts with an establishing federal ideology as a type of pluralism which provides the basis for an examination of interpretations of federalism and then considers the institutions of federation drawing extensively on empirical examples. The primary perception of this work is that it is virtually useless to talk descriptively about institutions without engaging simultaneously in a theoretical analysis of the terms in which this is done.

Daniel J. Elazar proficiently broadened the same line of thinking in his main work “Federalism: An Overview-1995”. He clearly reflected the prevailing hesitancy of the concept which, according to him, plunged on, inter-alia, the problems of distinguishing between the federalism as a broad social concept and federal principle as a narrower political device. The author elaborated and gives us a more extensive outlook of the concept in this book. The author does not only gives us the joy of exploration about the concept of federalism in a comparative perspective but also demonstrates that federalism offers a way to approach political phenomenon in its own right and is not to be subsumed within other models of political inquiry.

To broaden our vision on the conceptual and theoretical framework of federalism, Ronald L. Watts in his “Comparing Federal Systems in the 1990’s - 1996”, draws his unique draft of knowledge of federal systems. The author is succeeded in exploring the complexities of federations in advanced industrial countries such as the United States, India, Australia, Switzerland, Germany and Austria; multicultural federations like India and Malaysia; emerging federations like Pakistan, Belgium, Brazil, Argentina, South Africa and Spain; and finally those federations that have failed like Czechoslovakia and Pakistan are also discussed. In order to explore the diverse set of countries, the author focuses on the ways in which they manage with kinds of tensions that dominate in some federal countries every day. The author provides a clear analysis of the design and operation of a wide range of federations and federal experiments. The book is significant in order to broaden our understanding regarding the wide range of possibilities that exists in the application of federal principles.

Michael Burgess in his “Comparative Federal System: Theory and Practice-2006” used a comparative approach to explore the contemporary nature and meanings of federalism and federation. The author provides both a detailed theoretical analysis and fresh case studies in order to distinguish these two related terms - federation, a
particular kind of state and federalism an idea that promotes it. The book is mainly written on the theoretical framework of federalism with a simple and in an accessible style. In order to analysis the conceptual roots of federalism and federation, the author is looking at the main pathways of comparative analysis via empirical studies on the various federations, like United States of America, Canada, Australia, India, Malaysia, Belgium, Germany, Austria, Switzerland and the European Union.

B.M. Sharma in his “Federalism: Theory and Practice-1951-I” provided a comprehensive and inclusive historical background of federalism and its operation and evolution in the world. For its all complexity, the author provides us with a clear exposition of the historical roots, external influences, constitutional structure and ethnic and social diversity that have shaped the creation and evolution of the federal systems from the ancient times in the world. The author is greatly succeeded to produce a historical backdrop of federalism with the help of comparative analysis of the functioning of federalism in ancient, medieval and in modern countries like United States of America, Switzerland, Canada, Australia and India.

S.L. Verma in his Federal Authority in Indian Political System-1987 has made a significant attempt to analyze as well as to examine the federalism with the help of its various theories. After discussing the various theories of federalism as well as their weakness, the author proceeds to analyze the trends of federalism in India, centre-state relations and cooperative federalism relating to the socio-political aspects of national integration. The author has made a modest attempt to analyze the operative forces and processes of Indian federalism and those factors which are both weakening as well as strengthening the federal polity of India.

The book which very significantly stimulates the international discourse on the concept of autonomy is Thomas Fleiner and Lidija Basta Fleiner’s work – “Constitutional Democracy in a Multicultural and Globalised World-2011”. The book is a milestone in the history of political and state theory by defining the multicultural state as the essential political community of the 21st Century. The author greatly underlines the radical nature of the right to autonomy which is not only applicable to all groups in society but also encompasses the right of peoples to self-determination.
The present work has also largely drawn from Yash Ghai’s work - “Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States-2000” who systematically analyzed and popularized the concept of autonomy in the context of federalism and power sharing. The author considers autonomy as a device to reconcile and settle the conflicting interests of majority and minorities that according to him has become widespread as well as an inevitable problem in the society. The author asserts that autonomy emerged as a best method in all federal countries to bring people together. It is also one of the most sought method for conflict managements in all democratic countries.

The present work mostly takes the consideration of the autonomy of states in the context of Indian federalism. Although, there are many writers and authors who have contributed on the subject but Mahendra Pratap Singh in his “Indian Federalism: An Introduction-2011”, provided a comprehensive introduction to the operation and evolution of Indian federalism. For its all complexity, the author quite rightly provides us with a clear exposition of the historical roots, external influences, constitutional structure and ethnic and social diversity that have shaped the creation and evolution of the Indian federal system. The book is significant as it deals with the constitutional and institutional structure of Indian federalism and its evolution. It also reviews its most aspects like, constitutional division of powers, the impact of parliamentary structure, the influence of the constitutional courts and the development of local governments. It places these aspects in the wider context of the linguistic, religious and social diversity, the changing nature and role of the political parties and the Indian political economy of Indian federal system.

Jai Prakash Sharma in his book-“Federal Systems of India and Pakistan: A Comparative Perspective-1987” has made a modest attempt to study the federal structures of India and Pakistan in a comparative perspective. The comparison provides not only an insight to understand the nature of two political systems, sharing together common history and belonging to the Indian Sub-continent region. It also reveals an important political fact that how the federal principle and democracy do reinforce and enrich each other in these two countries. The author has also made an attempt to seek historical justification as to why federation could be treated as the only suitable form of political organization for the composite and diversified societies like those of India and Pakistan.
B.M. Sharma in his book—“Federalism: Theory and Practice-1951”, has given a comprehensive historical background of Indian federalism. The author endeavored to trace the origin and evolution of Indian Federalism from 1861 onwards with due focuses on its working under the present constitution. The author clearly brought out the essential differences between federalism as conceived by the British Government who framed the Government of India Act, 1935 and federalism as it is embodied in the constitution of free India.

A.P. Sharma in his book—“Prelude to Indian Federalism: A Study of Division of Powers under the Acts of 1919 and 1935-1976” has significantly given a comprehensive and broad outline on the historical background of Indian federalism. The author successfully analyzed the evolution and origin of federalism in India and inception of autonomy to the states with the help of Government of Act-1919 and Government of India Act-1935.

R.K. Sinha in his book—“Evolution of Fiscal Federalism in India-1981” has also given a broad outline on the historical background of Indian federalism with the help of Government of Act-1919 and Government of India Act-1935. The author had significantly made an attempt to analyse the role of India’s fiscal system in achieving Inter-regional balance in economic planning and development. The author has also significantly evaluated the extent of disparities in the levels of economic development among the different states in India.

Lawrence Saiez in his book—“Federalism without a Centre: The Impact of Political and Economic Reforms-2001” has greatly examined the nature of Indian federalism and the impact of political and economic reforms of India’s federal systems. The author also discussed the associated effects of the rise of regional politics parties that have significantly changed the parameters of Indian federation. The author perceived a shift from cooperative federalism to jurisdictional conflicts in the expanded ambience of union-state relations as well as the relationship between the state and the private sector.

Dr R.K. Chaubey in his book—“Federalism, Autonomy and Centre-State Relations-2007” significantly pointed out the experiments of Indian Federal system in general and autonomy and other rights of the States in particular. As a quasi-federal state, India has accommodated multiple diversities through forms of autonomy and
decentralisation to ensure harmonious functioning between the centre and the states. With the emergence of coalition governments at the centre as well as in the states, the federal arrangements in India have had to go through necessary modifications. Irrespective of these challenges, certain pillars of Indian federalism such as the written constitution, dynamic relationship between the centre and states and an independent judiciary have always remained stable enough to promote changing federal arrangements. Thus, the book reflects a well thought out exercise in understanding federalism in India by presenting a careful account of historical, legal, financial and administrative aspects of federalism.

The present work also largely draws from the Chandar Pal’s book- “State Autonomy In Indian Federation-1984”. The book is generally a significant attempt about the nature of Indian federalism and a particular inquiry into the various aspects of the problem of autonomy of the States. The author analysed the constitutional debates on the nature of Indian Federalism that took place in the Constituent Assembly at the time of framing of Indian constitution. In addition, since the Fourth General Elections of 1967, the demand for greater autonomy to the states has been more and more under discussion. There has been a demand for drastic constitutional changes in the direction of giving greater autonomy, especially more fiscal powers to the states. Therefore, the main thrust of this book is also to examine the various Reports as well as the committees in order to review the Centre-State relations in Indian federalism, like the Rajamannar Committee Report (1971), the Anandpur Sahib Resolution (1973), the West Bengal Memorandum (1977) and Sarkaria Commission (1983), etc.

The author has shed new light on the functioning of federalism as well as the notions of autonomy in the Centre-State relations in India. The operative federal balance of power in every federal system has been a variable and shifting one and Indian federal system is no exception to this pattern. The power of the centre government and the autonomy of states in Indian federal system reflect and articulate well-defined regional identities and the federal balance of power, at any given moment, as the product of the interaction of socio-cultural, economic, political and constitutional determinants. But, there has been a persistent lack of appreciation of the dynamics of functioning federal system of India. Despite the wide range of powers with the centre government, there has been a growing trend towards an assertion of autonomy on the part of the states. Though the trend has not been uniformly evident and there has been
back and forth moment, the balance of power is tilting at one time towards the centre and then towards the states. All this emphatically emphasised by the author in the present work. The growing vitality of the states implies no erosion of the power of the centre or the unity and security of the country. Thus, the question now arises: should we adopt and opt for ‘dual’ or ‘competence’ model of federalism, which has long since been discarded even in the land of its origin, or should we evolve robust indigenous solutions to our problem of autonomy of states? These all questions, which deserve sustained citizen interest and national debate, have been properly answered in the book. Thus, the book is very significant in view of contemporary Indian politics as well as the students of Indian federalism to understand the theoretical and practical dimensions of Indian federalism.

Dr Sarita in her book-“Federalism in India: A Quest for New Identity-2009” asserts that India’s dimensions and diversities, fostering and maintenance of unity is a primary objective for adopting a federal form of government. In every federal system, the power of the national government and the autonomy of regional governments have to view in relative terms. The central government may display greater authority in one policy area than in another, at one time than at another and in its dealings with one state than with another. In the same way, regional governments may be inclined to accept or submit to the central government’s initiative, persuasion or pressure under one set of circumstances and may be prone to assert, agitate and ‘fight’ for their autonomy under another. It is evidently wrong to view Union-State relations as a static pattern frozen in the provisions of the constitution. On the contrary, federal relations have a dynamic quality. To repeat, federal relations in India present a shifting power equation. All this has been emphatically emphasised by Dr Sarita in this valuable book. The author also emphasized that the federal nation-building reinforces the importance of federalism in holding a multi-ethnic, multi-lingual, multi-cultural and multi-regional society together within a federal Union. It is based on the simultaneous operation of two mutually correlated principles of self-rule and shared-rule in a county. The author has also stressed the necessity to construct a new federal balance in India through cooperative and constructive federal nation building. She quests for a new federal identity recasting centre-state relations in order to build a more equipoised and cooperative federal organisation, socio-cultural pluralism and their accommodation and harmonisation within federal policy and society.
D. Sundarram in his book-“Federal System and Coalition Government in India: Conflicts and Consensus in Centre-State Relations-2007”, has mostly analysed those factors which have led to the erosion of autonomy in the States of Indian federation. The book mainly focused on the misuse of Article 356 of the Indian Constitution as well as the imposition of President’s rule in the States of Indian federation. The author asserts that President rule has been imposed more than 100 times in Indian federation and Article 356 was frequently used during the regime of Indira Gandhi. The Congress government at the centre, at that time, was not prepared to tolerate non-congress governments at the state levels. The book analyzed the power of the President to dissolve the State Assemblies under Article 356 of the Constitution which was intended a safety value by framers of the constitution. It has been used as a strong political weapon to get rid of the government not of their choice in the states of Indian federation. The author concludes that there has been a full debate on Article 356 before the Sarkaria Commission, before the Inter-State Council and before the Supreme Court. The consensus is that we do need the Article but it should be used in the rarest of the rare cases.

A.S. Kabbur in his main book “Centre-State Relations in India: Perceptions of Non-Congress Political Parties-2004” made a critical analysis of Indian federal system. The author stresses that the Indian Constitution provides a system of government which is quasi-federal, a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features. It is a compromise between two apparently conflicting considerations. The strong central bias has been a boon to keep India together against the separatist forces of communalism, linguism and scramble of power. At the same time, federalism is not dead in India is also evidenced by the fact that, the new regions are constantly demanding statehood and the Union Government has yielded such demands in the states of Jharkhand, Uttarakhand and Chattisgarh.

Rasheed-ud-Din Khan’s foremost book- “Federal India: A Design for Change-1992” is a manifesto of wider debate and discussion about the India’s Republic with a view to building a people’s movement for the reconstruction of an equipoised, cooperative and contemporary federation in place of the centralised, dysfunctional and anachronistic Union-system. The main focus of the book is on the Indian political system by recognising its centrality and pre-eminence political structures, processes and conventions.
Lloyd I. Rudolph and Susanne Hoeber Rudolph in their significant piecework “Federalism as State Formation in India: The Theory of Shared and Negotiated Sovereignty-2010” has clearly given the historical backdrop of State formation as well federalism in Indian political system. The author has mainly focused on the changing character of the Indian polity, especially the impact of national planning on the autonomy of the constituent states of the Indian Union. The article brought out the conflicting pulls of centralization and decentralisation and end with the hopeful note that a correct balance between central direction and decentralised execution would eventually be found. The article stresses that Indian democracy can be strengthened if both the centre and states made an effort to cooperate with each other. The author expressed the view that by extending material cooperation, all stresses and strains between the centre and states will be eliminated. In this way, both the centre and the states would work together for the reconstruction of the country.

A.S. Narang in his article “Federalism in India: Limitations and Challenges-2012” has made an in-depth study on the provisions of the Indian Constitution and documents relating to the framing of the constitution. The author held the view that the founding fathers of Indian Constitution gave to India a union model of federalism, which critically blends the best feature of all the important types of federalism. The emerging Indian model reconciles the imperatives of strong centre with the need for state autonomy. The author also suggested that there is a need to redefine centre-state relations in India.

Balveer Arora in his work entitled- “India’s Experiences with Federalism: Lessons Learnt and Unlearnt-August 2015” has analysed the working of federalism in the political system of India. Indian federalism worked satisfactorily during the first seventeen years of Independence. Tensions emerged in 1967 when united front governments came to power in nine states of Indian Union. The seventies and eighties saw a conflict between the congress on the one hand and the regional and left parties on the other hand for greater powers to the states. The author asserts that the political development associated with the end of one-party dominance, the rise of regional parties and the assertion of the left parties were more favourable for shaping the Indian federal system. The author also revealed that the main objective of the framers of the constitution was to provide a constitutional framework that would be appropriate to the Indian society, its growth and development.
II. Autonomy of Jammu and Kashmir State Specific Literature Survey

Let us now shift our focus to a more specific literature survey of some influential texts on the autonomy of Jammu and Kashmir State within the constitution of India. First of all, the work which stimulates our debate and discussion on the federal problem of accommodating autonomy demands of the state of Jammu and Kashmir within the Indian federal structure is K.K. Wadhwa’s book- “Constitutional Autonomy: A Case Study of Jammu and Kashmir-2001”. The book is divided into two parts. The first part directly deals with the subject from historical to the present constitutional aspect of the problem. In Part II, there are Reports, Acts and the text of various relevant provisions of the constitution which are repeatedly referred in the book in different chapters. The book greatly helps us to locate the broad contours of the Jammu and Kashmir issue which is one the most baffling issues confronting the government of India since Independence. The author has clearly asserted that in spite of the special place of this state granted by the constitution of India and quite a few conciliatory efforts, made during this time, failed to dilute the situation in any way. The state government has always been demanding more autonomy to tackle the problems of the state. The Jammu and Kashmir Autonomy Report which has focused on the issue is the latest instance in this direction. The Union Cabinet had rejected it flatly, though it was duly adopted by the State Assembly. The author has also tried to explain the special provisions of the Constitution of India vis-à-vis the state permitted under Article 370 of the constitution of India. This is the only state in the Indian Union which has been given utmost autonomy in matters of its internal administration to the extent that it is the only state which has its own constitution. The author has emphatically emphasised that under Article 371 of the Constitution of India, there are ten other States in the Indian Union enlisted in the same Part XXI of the Constitution for the purpose of some special provisions. But the nature and need of each case are different. The scope of Article 370 of the Indian Constitution is much wider than that of Article 371. The author also states that this is not a single state which has demanded autonomy in its administration rather there were a number of other states in the past which have demanded autonomy. The author further asserts that there is no harm if a state demands something within the constitution. The author finally stresses the necessity to construct a new federal balance in India through cooperative and constructive federal nation building.
The present work also largely draws from the A.G. Noorani’s significant book—“Article 370: A Constitutional History of Jammu and Kashmir-2011” which has significantly examined the nature of autonomy to the state of Jammu and Kashmir. The book is a collection of documents on Article 370 of the Constitution of India, which contains ‘temporary provisions’ with respect to the state of Jammu and Kashmir. It provides documents on the five-month long negotiations which preceded its enactment on 17 October 1949. The book also explains the significance of the Article 370 of the Indian Constitution and describes how it was eroded slowly and gradually. The book also traces the constitutional evolution of the state of Jammu and Kashmir and its relationship with the Union of India thereafter. The book significantly covers all the constitutional developments took place in the state from the period of 1946 to the year 2010. Apart from this, the book also includes almost all Presidential Constitutional Orders imposed by the centre government in the state of Jammu and Kashmir. Various other Reports which are very relevant provisions of the constitution like, The Third Group set up by the Prime Minister Dr Manmohan Singh, as a result of three Round Table Conferences on Kashmir was devoted to this aspect. Justice Saghir Ahmad, a retired judge of the Supreme Court, drew up a report of this group, therefore, also known as Justice Saghir Report to review the relationship of centre government with the state of Jammu and Kashmir as well for the restoration of autonomy to the state of Jammu and Kashmir. All these are emphatically analysed in this book. The collection of pertinent documents in the present work will greatly assist in resolving the impasse on Article 370 of the Indian Constitution and in providing a solution to the wider Kashmir problem.

The another work which introduces our present concern is A.G. Noorani’s another important work “Kashmir Question-1964” which has given a descriptive study as well as an inclusive outlook on the historical background of Kashmir dispute. The author is fully aware of its limitations and shortcomings. All that the present work seeks to stress is that while Kashmir’s accession to India is perfectly legal and valid, it is provisional. In other words, the state’s future still remains to be decided by agreement among the three parties concerned; namely, the Governments of India and Pakistan and the people of Kashmir. This present little work greatly helps us in making available the facts of a knowledge on which the understanding and a solution of this vexed problem can be based.
Prem Nath Bazaz in his book-“Kashmir in Crucible-2005” has given a comprehensive and broad outline on the historical background of the state of Jammu and Kashmir. At present, the most obdurate conflict in the region of South Asia is the issue of “Kashmir dispute” over which both India and Pakistan went to war more than three times. By giving the roots and evolution of conflict, the author states that the Kashmir problem is much older than the Accession issue which cropped up in the partition of British India in August 1947. Ever since the British imperialists sold the valley to Maharaja Gulab Singh in 1846, the problem has presented itself in one shape or another. For over eighty years, the Dogra Hindu rulers could contrive to conceal the hideous truth that their subjects, predominant majority of whom was Muslim, were unhappy under their harsh rule. But when in 1931 the Kashmiris rose in open rebellion against the disposition the problem was posed in public for the first time. The partition of India, as was to be expected, did not resolve the problems of the two communities. Instead of ending the Hindu-Muslim conflict, it merely elevated the inter-community blood-bath into the inter-state rivalry between the two countries. After independence, the issue has, in essence, remained unchanged, namely, the scope of freedom for the state Muslims under majority Hindu rules. All this comprehensive history has been emphatically emphasised by the author in this book.

The present study has also largely drawn from M.K. Teng’s book-“Kashmir: Myth of Autonomy-1998”. The book is aimed to provide the reader comprehensive account of the movement for the autonomy of the state of Jammu and Kashmir, its ideological content and its separate character. The work in-depth analysis presents the special provisions of the Constitution of India, envisaged by Article 370 of the Indian Constitution and the partial application of the Constitution of India to the state in the year of 1954. The author has made a modest attempt to assess the consequences of the exclusion of the state from the constitutional organisation of India and their effect on the course of events in the state. A significant effort has also been made to uncover the linkages between the communalization of the state, inevitable in the absence of constitutional safeguards against the discriminatory exercise of authority and the consolidation of the secessionist forces in the state. Finally, the author has made a significant attempt to trace the course of the militarization of the secessionist movement in the state and analyse its impact on the autonomy of the state.
Another important work which introduces our present concern and which stimulates our debate and discussion is Adarsh Sein Anand’s main book - “The Development of the Constitution of Jammu and Kashmir-1980” which is one of the best work on the political and Constitutional development of the state of Jammu and Kashmir. The author has made a significant attempt in order to give us a broad outlook for the creation of the state of Jammu and Kashmir as well as the development of its own separate Constitution. The promulgation of the Jammu and Kashmir Constitution Act, 1939, its salient features and the factors which led to the enactment of the Act have also been emphasized in the present work. The Accession of the state of Jammu and Kashmir to India which has been a matter of great political controversy even at the present time has been dealt in detail in the present work. The significant developments which occurred in the state of Jammu and Kashmir after its accession to India as well as those factors which made its constitutional position different from that of other Indian states have been discussed in detail in the present work.

The full constitutional position of the state of Jammu and Kashmir cannot be understood by a reference to the Constitution of Jammu and Kashmir alone and recourse has to be made to the Constitution of India so far as it applies to the State. The ambit and scope of Article 370 of the Constitution of India have been examined. Various Presidential Orders and Ordinances applying different provisions of the Constitution of India to the State have been noticed and commented upon. Section-wise comments have been made in the Constitution of Jammu and Kashmir, 1957, as amended from time to time. It also contains the list of important Central Acts which have been applied to this state from time to time. All this has been emphatically emphasised by the author in the present book. The comments on the constitutional provisions have been made by referring the latest case laws on the subject-“Why the Constitution of India was not made fully applicable to the State of Jammu and Kashmir like the rest of the states in India? Why was the state allowed to have a Constitution of its own? What were the factors which led the State to have its own Constitution and to secure a special status in the Indian Union? Has the peculiarity in Kashmir led to any great hardship”? These are some of the questions which have been answered in this book. Reference to the corresponding or relevant articles of the Constitution of India has also been made by the author to enable the reader to appreciate the provisions of the Constitution of Jammu and Kashmir.
The present work has also largely drawn from Ram Nath Sharma’s book- “Kashmir Autonomy: An Exercise in Centre-State Relations-2000”. After giving a comprehensive history of the state of Jammu and Kashmir, the author declares that the Kashmir problem was created so-called cosmopolitanism of Nehru, his thinking as a world leader, his lack of realism and his blunder of taking invaders as rivals. The next part of the book focuses on the present phase of the Kashmir problem which has been aggravated, if not created, by the Indian leaders. The author has emphatically stated all the developments which took place in the relationship between the state government and the centre government after state has acceded to the Indian Union. The author declares that the demand of autonomy to the state of Jammu and Kashmir stimulated by the political party National Conference has now become a debate and discussion. The author declares that though the Sarkaria Commission had already made an important recommendation on this issue and even central government, on their part, is also prepared for devolution of more powers to the state in its internal administration. However, both NDA and the Congress have rejected the demand of the National Conference to restore Pre-1953 status to the state. They declared that the accord between Sheikh Abdullah and Indira Gandhi – 1975 is as the plank for future talks. The author finally states that from Akbar to Atal Bihari Vajpayee, the Kashmir problem has been basically a problem of centre-state relations. This problem cannot be solved by force or even by Constitutional pressure. It must be dealt with political wisdom. Strong states within a strong federal government should be the objective to be attained. Final formulations must be equally acceptable to Ladakh, Jammu and the Kashmir valley. The final solution must be acceptable to the masses and not only to the political parties.

M.G. Chitkara’s in his book-“Kashmir Crisis-2003” states that the Kashmir problem was a direct result of the British policy of divide and rule whereby religious differences was exploited to weaken India in an attempt to perpetuate British Raj. The author states that the religious fundamentalism and terrorism from across the border are playing havoc with the lives of ordinary people who are depended for their income on a million tourists every year. Innocent men, women and children are often caught in the crossfire between the security forces and the terrorists. Kashmiri Pandits and Muslims followed different religions but there was no hatred of enmity between them. They had come under Sufi influence and believed in the philosophy of ‘Live and Let
Live’, because of their common history and culture. The challenge will involve maintaining a balance between the individuality of Kashmir’s ethno-religious identity and the broader political entity to which this will be related. By ensuring the devolution of power at the regional and sub-regional level, the inter-regional harmony of all the three regions – Jammu, Ladakh and Kashmir of the state must be included.

Ahmad Nazeer in his main work “Kashmir Problem and Solution-2009” presents his views on Kashmir problem viz-a-viz United Nations resolutions on Kashmir and prospects of implementation of Right to Self-determination to the people. The author focuses that for the past six decades Kashmir patiently waits amidst untold suffering for the United Nations resolution on Self-determination to be implemented. As each year and hollow promises passes by, the hope for self-determination becomes less real while the suffering of the Kashmiri people becomes more patent. The author states that enough has been written about the Kashmir, its history, societal issues, economy and political geography but as per Kashmir problem is concerned, many facets in the guise of solutions are being discussed or written rather than the core issue of freedom (Azadi) in form of self-determination. Thus, before providing any solution or supporting the floating ones, one must keep in mind that Kashmir is not a territorial dispute, between two countries nor is it any bilateral or tripartite issue. It is simply an issue of granting the right to self-determination to the people of Kashmir.

Raju G.C. Thomas in his book-“Perspectives on Kashmir: The Roots of Conflict in South Asia-1992” has provided a variety of perspectives on the nature of the Kashmir problem. The author states that the bulk of the perspectives were provided by individuals who are or were originally from the subcontinent and it is important that their viewpoints and insights must be considered with a true sense of attitudes and feelings.

Another work from the present study has largely drawn is Rekha Chowdhary’s book-“Identity Politics in Jammu and Kashmir-2010”. Kashmir has attracted the attention of researchers mainly due to the conflict situation. The central point of this book also remains the conflict situation. However, the author’s perspective is different. Acknowledging the complexity of the conflict having a convergence between the external and internal dimensions, the author seeks to focus on the internal dimensions and locate the conflict in the identity politics of Kashmir. While much of available
work on Kashmir deals with the external dimensions of conflict, the internal dimensions of conflict remain largely ignored. By focusing on the identity politics of Kashmir, the author has made an attempt is made in this book to confront the intricacy of the ‘Kashmir Issue’ and understand its multi-layered reality. Seen from the internal perspective, the Kashmir Issue assumes complexity due to two factors: first, there is an inner dynamism of the Kashmir identity, which makes it imperative to go beyond the simplistic representation of the politics ‘in’ and ‘of’ Kashmir. Second, there is the context of the political divergence within the State which calls for an attention to the multiple identity politics. The identity politics of Kashmir is predominant politics of the State of Jammu and Kashmir; hence much of the focus of the book is on this politics. However, since these identity politics does not represent all the political expressions within the State of Jammu and Kashmir, the book also goes beyond the ‘Kashmir identity politics’ and seeks to explore the other manifestations of political identities within the State.

The next work which introduces our present concern is Gull Mohammad Wani and Nasir A. Naqash’s book-“Reflections on Kashmir Politics-1993”. The present work made an attempt to investigate and analyse the concept of Kashmiri identity from a purely political perspective. The author declares that the survey of the related literature reveals that the concept of Kashmiri identity has mainly been projected through constitutional and functional perspectives. That approach indulges in the narration of events or simply in ‘story writing’. The attempt to conceptualise the Kashmiri identity has been a neglected focus of the academic investigation. The thrust of the present work is therefore that politico-constitutional deprivation has plunged Kashmir into the present crisis that we postulate and posit as the phenomena of an identity crisis. The present work also explores the phenomenon of identity-formation and the challenges it poses to the nation-building process. The significant developments which occurred in the state of Jammu and Kashmir after its accession to India as well as those factors which made the state different from that of other Indian states in many aspects have also been discussed in detail in the present work. The author also states that the contemporary scenario reveals this fact to a discerning eye. The erosion of political, social, economic and cultural autonomy pushed the people of the state notably the historically prized valley on the path of alienation and revolutionary militancy.
Finally, the work which introduces our present concern and stimulates our debate and discussion is M.S. Ratnaparkhi’s “Kashmir Problem and its Solution-2011”. The author has tried to trace the political history of Kashmir since 1000 AD which shows that Kashmir was not a part of India rather it was a separate country from the beginning till India’s independence. The present work also seeks to present the historical background of Article 370 of the Indian Constitution. It further mentions the milestones which lead to the integration of this state with the rest of country which is still in process. The author seeks to discuss this issue in great detail along with the contemporary debates with regard to Article 370 in India. The present work also discusses the present phase of Kashmir politics with it focuses on the three currents of public opinion in contemporary Kashmir politics. These are:

I, Jammu and Ladakh want a full merger of Kashmir with the Indian Union, without any reservation. National Conference appears to have accepted the merger of State with the rest of India, but with the condition that Kashmir should get full or greater autonomy. Though, they have not spelt out their idea as to what they mean by full autonomy. But from the subsequent statements, it appears, they want the restoration of Pre-1953 Status for the State of Jammu and Kashmir.


III, The other group of Hurriyat Conference consisting of Jammu Kashmir Liberation Front (JKLF) led by Yasin Malik wants a separate independent sovereign Kashmir. It wants the merger neither with India nor with Pakistan.

Finally, the author also gives some practical suggestions for resolving the Kashmir problem which seems insoluble matter at the present time. The author states that love, affection, brotherhood and confidence are the main keys to this solution. For him, with some give and take policy, without any harm to the sovereignty and territorial integrity of India, it can be solved to the satisfaction of the people of India as well as Jammu and Kashmir (including the people of Pakistan Occupied Kashmir). The book is really an eye-opener and would go a long way in enabling the people to see the Kashmir problem from a right perspective.
Chapter Scheme of the Present Study

The present study contains six chapters including the introductory chapter as the first chapter. The concept of ‘federalism’ has been a subject of great confusion, and misunderstanding and like many other social science ideas and concepts; it became more difficult to define the term federalism. For the sake of clarity and lucidity, an attempt has therefore been made in the second chapter, to clear the confusion and misunderstanding regarding the concept of federalism. In order to distinguish the term federalism with other related terms like – federation, confederation, union, etc. a comparative approach has been used to explore its contemporary nature and meaning which provides both a detailed theoretical analysis and fresh case studies. In this chapter, the present study not only see what ‘federalism’ is but with the help of historical background of federalism as well as its many theories, many controversial questions regarding the concept of federalism, like why federalism was chosen as a constitutional model and why not? Where is federalism and where not? What ends it may serve or not? have been properly answered. An attempt has also been made in the second chapter to consider the relationship between federalism and autonomy and the place of autonomy in the framework of federal form of government. After discussing both sides, ‘how autonomy promotes or encourages secession’ and ‘how autonomy prevents or stops secession of units in federal and multicultural countries’, with the help of many cases in different real federations like in Yugoslavia, China and even in India. It becomes clear that giving autonomy to the units is a panacea and universal remedy to all internal conflicts within the federal constitutions.

India had introduced a federal form of government first in 1935 after the implementation of Government of India Act, 1935. It was under this Act that the powers and functions of the Union and the provinces were first time clearly demarcated and defined. When India attained Independence from British rule in 1947, the Constitutional Assembly adopted a similar federal structure for internal administration. In the third chapter after discussing an origin and evolution of Indian federalism with the help of historical approach, an attempt has been made to define the nature of Indian federalism. Though the debate has been going on since 1950’s about Indian federalism and ever increasing demand by the states to minimising the centralising tendencies in order to maintain their autonomy. However, the centripetal political forces did manage to dilute the autonomy of the states to a major extent.
In fact, this experience of over-centralization, in the political, constitutional and economic spheres, for the last six and half decades has revealed that such a policy has left large states of the country dissatisfied. In the third chapter, therefore, an attempt has also been made to drawn an attention on those causes which led to the erosion of autonomy and other rights to the states. The problem of the present study has mostly three determinants which came into the forefront as the causes for the erosion of autonomy to the states. These three determinants are (I) Constitutional determinants concerned with distribution of financial powers between the Centre and the States and with the nature of autonomy to the states, (ii) Socio-economic determinants like planning process and welfare measures influences nature and quantity of increasing centralized tendencies and (iii) Political determinants, like - Political Parties, Pressure Groups, Political Leaders etc. created favorable or adverse reactions to the centralized tendencies and erosion of state autonomy to the states. Consequently, we will also see in the third chapter, those grounds which are the responsible for the erosion of autonomy in the States with the help of recommendations of various commissions which has been set-up on Centre-State relations.

The autonomy debate in the context of Indian federalism is historically linked with the state of Jammu and Kashmir. It is the only state in the country which has given a special status under Article 370 of the Indian Constitution and a greater degree of autonomy within the Union of India. In the fourth chapter, we will see the position of Jammu and Kashmir and autonomy enjoyed by it within the Union of India with the help of Instrument of Accession, dated October 26, 1947, when the state joined the Union of India as a federal unit, its separate Constitution as well as Article 370 of the Indian Constitution. The fifth chapter deals with the erosion of autonomy as well as the demand for autonomy in the state of Jammu and Kashmir. The erosion of autonomy in the state began only after 1953 as the state saw a versatile breakdown which not only watered down its special status and diluted its autonomy but even weakened its position as compared to the other States in India. All these factors, causes and other dimensions which led to the erosion of autonomy to the states and all these agreements, proposals and commissions that has been set-up in order to give more autonomy to the state of Jammu and Kashmir are emphatically discussed in detail in fifth chapter. On the basis of the above-mentioned analysis, the concluding remarks are given in the last sixth chapter.
Objectives of the Study

The present study examines the state autonomy in Indian federation as well as in its most unique state i.e., the state of Jammu and Kashmir. In addition the above mentioned objective, the other objectives are:

1. To examine the nature of federal form of government.
2. To examine why India had opted federal form of government with the strong centre government rather than a unitary form of government at the time of independence-1947.
3. To examine the study of Jammu and Kashmir autonomy in the context of Indian federation from a legal and constitutional point of view.
4. To examine the nature and causes of erosion of autonomy in the state of Jammu and Kashmir and thereby the demand for greater autonomy by the State of Jammu and Kashmir within the Indian Union.

Research Questions of the study

The study tries to answer the following questions related to the problem under investigation:

1. How the operational mechanism of the central government gradually led to the erosion of autonomy of the states with special reference of Jammu and Kashmir?
2. How far it is possible to re-examine or to review the Article 370 of the Indian Constitution?
3. What are the fallouts of erosion of state autonomy in the state of Jammu and Kashmir?
Research Methodology and Sources of Data

In the present proposed study, multi-variant methods have been adopted in order to respond the research questions as well as to fulfill the research objectives of the present study. In the present study historical approach has been used in order to trace the evolution of federalism in India as well as the constitutional history of Jammu and Kashmir. Comparative research methodology has been used in comparing the extent of autonomy in Jammu and Kashmir vis-a-vis other States of the Indian Union. In addition to it, the content analysis method has also been applied frequently throughout the study to critically evaluate the particular events related to the problem under investigation. Besides above, the other sources like, descriptive and analytical that may impinge on the present study would also have been taken in order to respond the research questions.

In order to address the major objectives of the present research work systematically both Primary and Secondary sources of information have been exhausted. The secondary sources constitute the major part of the study. The books, journals, articles, periodicals, newspaper and the help of internet constitute the secondary sources. However, the primary sources unequivocally support the present research work in order to find out the crucial areas of the Indian federal system and its relation with the State of Jammu and Kashmir. The government documents, official reports of various committees and commissions constituted by Government of India as well as the State of Jammu and Kashmir regarding the Centre-State relationship constitute the primary sources.

Hypothesis of the Study

“Increasing power of the Centre Government having Centre tendencies” is the hypothesis of the present study and is the basis for research investigation. The hypothesis is tested by after collecting and analysing the relevant data. ‘Centre Tendencies’ is an ‘Independent Variable’ whereas ‘State Autonomy’ is a ‘Dependable Variable’ and the first variable affects the second variable (casual relationship). Therefore, as per the objectives framed in the present study, the present hypothesis is a casual hypothesis as changes in independent variable causes changes in the dependent variable.
Limitations of the Study

Like every study, this research study has also certain limitations. It does not study the role of other political parties in emergence and persistence of Kashmir conflict. The research does not study the various approaches and possibilities regarding the resolution of Kashmir conflict. It does not study the role of UNO, USA and former USSR in reducing the tension between India and Pakistan from time to time. Further, the study does not go into details of those proposals, formulas and other approaches which are mentioned and discussed outside the Indian federal system, like Pervaiz Musharraf’s Four-point formula, Dixon plan, Plebiscite and the role played by the secessionist parties in declining the demand of autonomy by the state of Jammu and Kashmir.