CHAPTER-V

LEGISLATIVE, ADMINISTRATIVE AND FINANCIAL
RELATIONS BETWEEN JAMMU AND KASHMIR
STATE AND INDIA

The Constitution of India envisages a clearly defined division of powers between Union Government and State Governments. Except in certain specified circumstances, enumerated by the Constitution of India, the Union government and the governments of the states exercise power within their respective limits, which are defined by the provisions of the Constitution. The division of powers envisaged by the Constitution of India is embodied in an elaborate scheme under which the legislative, administrative and financial powers of the Union government and the state governments are enumerated in detail.

A characteristic feature of the distribution of powers, the Indian federal structure embodies, is that, all the residuary powers are secured to the Union Government. The Constitution of India explicitly vests in the Parliament the exclusive right to legislate in regard to any matter in addition to enumerated head of the Union List, which is not enumerated in the State List or the Concurrent List.¹

In state of Jammu and Kashmir, however, the division of powers between the state of Jammu and Kashmir and the Union Government is determined within the provisions of Article 370 of the Constitution of India as amended and modified by the various Constitutions (Application to Jammu and Kashmir) Orders, promulgated by the President of India from time to time. Article 370, in its original and unamended form did not provide for the application of the provisions, the Constitution of India, underlined for the Centre-state relations, to the Jammu and Kashmir State. According to its provisions powers of the Parliament to make laws for the state were limited to:

1. Those matters in the Union List and the Concurrent List, which in consultation with the Government of state, were, declared by the President to correspond to matters specified in the Instrument of Accession as the matters with respect to which the Dominion legislature had the power to legislate for the state; and
II. Such other matters in the Union List and the Concurrent List, as were specified by the President of India with the concurrence of the government of the state.

Thus the powers not transferred to the Union Government, in other words, the residuary powers, were retained by the state of Jammu and Kashmir. But this scheme of the distribution of powers between the two governments was drastically changed in 1954, when the President of India promulgated the Constitution (Application to Jammu and Kashmir) Order, 1954, and part XI of the Constitution of India together with Seventh Schedule, was made applicable to Jammu and Kashmir with certain reservations and modifications.

The provisions of the Part XI of the Constitution of India deal with legislative, administrative and financial relations between the Union Government and the States. The application of these provisions to the state of Jammu and Kashmir unmistakably brought the division of power between the Union and the State, in line with the federal principle envisaged by the Constitution of India. The later Presidential Orders further defined the two orbits of authority, pruning and modifying the reservation imposed on the application of the provisions of the Constitution of India to the state.

The powers transferred to the Union Government for its exclusive operation are specified in the Union List as the subjects with regard to which the provisions of the 7th Schedule are applicable to the state. The powers not included in these two categories are retained by the state in residuum. This is, in fact the most characteristic feature of the division of powers between the Union Government and state.

The Indian federation is a consequence of British Colonial development. The scheme of the distribution of powers between the centre and state was first applied in India by the Britishers under the Government of India Act 1935. So, the framers of the Indian Constitution unanimously favoured strong central government. Among the framers of the Constitution were great leaders, eminent jurists, reputed statesmen and learned political scientists and others who had devoted their whole life in the service of the nation. They were all patriotic people, zealous and determined to see that India after independence must be a strong and united nation capable of weathering all storms. The main fact was that history of the country disclosed fissiparous tendencies and divisive factors. They were also apprehensive of external attack.
It was also felt that a strong central government would command respect from the nations of the world. Throughout the proceedings of the Constituent Assembly the idea persisted that “the unity of the nation” which is mentioned as one of the national ideals in the preamble of the Constitution, must be secured and this could be done only by adopting a federal structure with a strong centre. The integrity of the country, vast in area and with a large population, could not otherwise be assured.  

The members of the Constituent Assembly drawing on the experience of the old federations like the U.S.A, Canada and Australia pursued “the policy of pick and choose to see (what) would suit (them) best, (what) would suit the genius of the nation---” This process produced a new centralised but cooperative federation with a new modifications of established ideas about the construction of federal governments and relations with the governments of their constituent units. So, Dr. B.R. Ambedkar rightly said that the “Constitution avoided the tight mould of federalism” in which the American Constitution was caught, could be “both unitary as well as federal according to the requirement of time and circumstances.”

The use of the word ‘Union’ in the Constitution of India was deliberate. Regarding this Dr. B.R. Ambedkar observed that “the drafting committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation and that the federation not being the result of an agreement, no state has the right to secede from it. The Federation is a union because it is indestructible.....” It is also worth remembering that the provinces which became states under the federation were mere administrative units and no sovereign entities. No doubt, under the Constitution of India the states enjoy supremacy within their spheres, subject to the limits and conditions imposed by the Constitution. The territories of the states, however, are the territories of the union of India over which the union laws operate. There is a single citizenship for the whole country.

The Centre-State relations are regulated by the provisions of Indian Constitution and State Constitution, where it persists. The mode of their formation and the pre-federal status of their constituent units largely determine this relationship. The circumstance in which India adopted the federal mode was unique. The princely states played a significant role in the emergence of the Indian federation. These states had never constituted a compact or continuous mass during British rule.
but had been scattered all over the country. They had also differed widely in terms of size and population. Besides, there had been wide variations in the privileges and status enjoyed by the princes.

The states had been virtually isolated from the main currents of political life in British India. The problem which confronted India’s Constitution makers in 1947 was to fit these states constitutionally in the new India and define their relations with areas that had been under direct British rule. The picture which India presented at the time of independence was quite complicated indeed. The most pressing problem was that of Integration. The Constitution makers of India did not make any significant departure from the federal scheme contained in the Act of 1935. Gradually all the states completely merged in the Dominion of India on the basis of that scheme of distribution of powers. Of course some exceptions were made in the Constitutional pattern, the most conspicuous among such exceptions being the relationship between the Union and the state of Jammu and Kashmir.

The Legislative Relations

The Constitution of India envisages a well defined division of legislative powers between the Union government and the state government in accordance with which the Union government is vested with powers to legislate on subjects of national importance and the State government is vested with the powers to legislate on the subjects of local and provincial interests. Besides the exclusive legislative powers that the Union and the State legislatures are given, concurrent powers of legislation are given to both the Union Government and the State Governments over a number of other subjects. The scheme of distribution of powers is embodied in Part XI of the constitution together with the Seventh Schedule of the Constitution of India.

So the legislative powers of the Parliament and the state legislatures have been divided into three lists in the Seventh Schedule of the Constitution. List I called the Union List contain 97 entries with respect to which the centre has exclusive power to make laws. List II enumerates 66 entries for exclusive legislation by state legislatures. List III known as Concurrent List contains 47 entries for concurrent law making by both the centre and the state.
Supremacy of Parliament in the Legislative Field

If Parliament has passed a legislation on any subject on the Union List, it is supreme and cannot be superseded by any legislation passed by any of the state legislatures on any subject in any context. Similarly, if there is any conflict between a parliamentary legislation on a subject of Concurrent List and a state legislation on the same subject, it is the Parliamentary legislation which prevails. The Parliament legislation also overrides any legislation by any of the state legislatures on any subject included in the State List in case of any conflict between the two. 17

List III of the Seventh Schedule of the Constitution of India enumerates the matters which give concurrent powers of legislation to both the centre and the states. The concurrent jurisdiction is provided because there are certain matters which cannot be allocated exclusively either to a central or to a provincial legislation and for which, though it is often desirable that the provincial legislature should make provision it is equally necessary that the central legislature too should have legislative jurisdiction to enable it in some cases to secure uniformity is the main principle of law throughout the country.

The Concurrent List covers such matters as civil law and criminal procedures, preventive detention, transfer of property and legal aid, medical or other professions. 18 The Union List covers wide variety of subjects. Similarly the concurrent list has many more subjects touching almost every aspect of our national life. This shows the primacy of the Union in the legislative spheres.

The legislative powers of states, on the other hand, though not so broad as those of the centre are, nevertheless, significant and touch the people perhaps more intimately. They have to maintain law and order. Agriculture and irrigation, on which the prosperity of the country so much depends, fall within the domains of the states. They can regulate industry and mines that has been left over by the centre. Health, roads, waterways, trade and commerce also fall in their jurisdiction. 19

Concurrent Legislative Powers of the Union and the States

About 47 items have been included in concurrent list so that a uniform texture and framework of laws may be maintained throughout the country. The centre is given power to enact normative legislation and lay down general standards while the units are left with power to apply such standard in the light of varying local conditions.
and circumstances. It was felt that a large list of concurrent heads of legislation was calculated to promote harmony between the centre and the states and to avoid possibility of the conflicts which would have arisen if there had been only a two fold division of the subject matters of legislation.

The 47 entries of the concurrent list fall into two groups. The first group is made of the general law and procedure, civil procedure, evidence, marriage, divorce, property law, contracts etc. The other group includes subjects related to economic and social planning. It includes interalia, social welfare, trade unions, social security, vocational and technical training of labour, legal, medical and other professions, price control, acquisition and requisition of property.

The Parliament can legislate on matters of Concurrent List when nationwide uniformity is required in these matters. In the absence of Parliamentary legislation, the states can legislate in the concurrent matters. Even when Parliament has enacted laws on any particular topic in the concurrent list, the states can pass laws supplementary to the law passed by the Parliament. As both the Parliament and the State Legislature are competent to legislate on any matter enumerated in the concurrent list and no question of legislature competence would arise. But in case of any consistency between any provision of Union law and that of a state law, the latter shall be void to the extent of repugnancy. Article 254 (1) lays down that in the case of repugnancy between a union law and a state law in a concurrent matter, the union law is to prevail and that the state law is valid to the extent of the repugnancy. Article 246 (1) clearly stipulates the supremacy of the union laws over the state laws.

The Concurrent List was not applicable to Jammu and Kashmir, it has been made applicable to the state in a modified form whereby some of the entries have been applied in the original form and others in modified form.

Distribution of Legislative Powers between the Centre and the State of Jammu and Kashmir

The Legislative relations between the state of Jammu and Kashmir and the Union are also determined under the same scheme of the division of powers which governs the legislative relations between the union and the other states with certain reservations and modifications. The provisions of the Seventh Schedule are applicable to the state in regard to the Union List and the Concurrent List with certain
An important aspect of the distribution of legislative powers between the Centre and the state of Jammu and Kashmir is that not all laws passed by the Union Parliament are applicable automatically to the state of Jammu and Kashmir as in the case of other states. It is only those union laws which relate to the items on Union list and the Concurrent List specifically transferred to the jurisdiction of the union are automatically applicable to the state of Jammu and Kashmir.

Again, if the Rajya Sabha passes a resolution by a two thirds majority characterising any item on the state list as one of national importance and empowers Parliament to legislate in respect of it, the legislation so passed would not apply to the state of Jammu and Kashmir because the state list in the Seventh Schedule of the Constitution of India is not applicable to the state of Jammu and Kashmir.

The Parliament is competent to legislate in relation to the state of Jammu and Kashmir on the following subjects in the Union List:

1. Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war of its prosecution and after its termination to effective demobilisation.
2. Naval, Military and Air forces; any other armed forces of the Union.
3. Naval, military and air force works.
4. Administration of the Cantonments.
5. Arms, fire-arms, ammunition and explosives.
6. Atomic energy and mineral resources necessary for its production.
7. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.
8. Foreign affairs, all matters which bring the union into relation with any foreign country.
9. Diplomatic, consular and trade representations.
11. Participation in international conferences, associations and other bodies and conventions with foreign countries.
12. War and peace.
13. Foreign Jurisdiction.
15. Extradition.
16. Admission into and emigration and compulsion from India, passports and visas.
17. Pilgrimages to places outside India.
18. Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
20. Highways declared by or under law made by Parliament to be national Highways
21. Shipping and Navigation on land water-ways, declared by Parliament by law to be national water ways, as regards mechanically propelled vessels; the rule of the road on water-ways.
22. Maritime shipping and navigation, including shipping and navigation and tidal water, provisions of education and training for the mercantile marine and regulation of such education and training provided by states and other agencies
23. Light houses, including light ships, beacon and other provisions for the safety of shipping and aircraft.
24. Ports declared by or under law made by the Parliament or existing law to be major parts, including their delimitations and the Constitution of port authorities.
25. Port quarantine, including hospitals connected therewith seamen’s and marine hospitals.
26. Airways, aircrafts and air navigations; provision of the aerodromes, provision for aeronautical education and training and regulation of such education and training provided by the states and other agencies.
27. Carriage of passengers and goods by railways, sea or air, or by national water ways in mechanically propelled vessels.

28. Post and telegraphs, telephones, wireless broadcasting and other like forms of communication.

29. Public debt of the Union.


31. Foreign loans.

32. Reserve Bank of India.


34. Lotteries organised by the Government of India or the Government of the state.

35. Trade and commerce with foreign countries; import and export across custom frontiers; definition of custom frontiers.

36. Inter-state trade and commerce.

37. Incorporation, regulation and winding up of trading corporations, including banking insurance and financial corporations, but not including cooperative societies.

38. Incorporation, regulation and winding up of corporations, whether trading or not, with objects not confined to one state, but not including universities.


40. Bills of exchange, cheques, promissory notes and other like instruments.

41. Insurance.

42. Stock exchange.

43. Patents, inventions and design; Copyrights, trademarks and merchandise marks.

44. Establishment of standards of quality for goods to be exported out of India or transported from one state to another.

45. Establishment of standards of weights and measures.
46. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.

47. Regulation and Development of oilfields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

48. Regulation of mines and mineral development to the extent of which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest.

49. Regulation of labour and safety in mines and oil fields.

50. Regulation and Development of Inter-State rivers and river valleys to the extent of which such regulation and development under the control of the union is declared by Parliament by law to be expedient in the public interest.

51. Fishing and fisheries beyond territorial waters.

52. Manufacture, supply and distribution of salt by union agencies, regulation and control of manufacture, supply and distribution of salt by other agencies.

53. Cultivation, manufacture and sale for export of opium.

54. The institutions known at the commencement of this Constitution as the National Library, the Indian Museum, the Imperial war museum, the Victoria memorial and the Indian war memorial and any other like institutions financed by Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

55. Industrial disputes concerning union employees.

56. The institutions known at the commencement of this Constitution as the Banaras Hindu University, the Aligarh Muslim University, the Delhi University and any other institution declared by Parliament by law to be institutions of national importance.

57. Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by the Parliament by law to be institutions of National importance.
58. Union agencies and institutions for (a) professional, vocational or technical training including the training of police officers; (b) the promotion of special studies or research; (c) Scientific or technical assistance in the investigation and detection of crime.

59. Coordination and determination of standards in institutions for higher education or research or scientific or technical institutions.

60. Ancient and historical monuments and archaeological sites and remains declared by Parliament by law to be of National importance.

61. The survey of India, the Geological, Botanical, Zoological and Anthropological surveys of India; Meteorological organisations.


63. Union Public Services, All India Services, Union Public Service Commission.

64. Union pensions, that is to say, pensions payable by the Government of India or out of the Consolidated Fund of India.

65. Elections to Parliament, to the legislatures of the states and to the offices of President, Vice President and the Election Commission.

66. Salaries and allowances of the members of the Parliament, the Chairman and the Deputy Chairman of the Council of States and the Speakers and Deputy Speakers of the House of the People.

67. Powers, privileges and immunities of each House of Parliament and of the members and the committees of each house; enforcement of attendance of persons for giving evidence or producing document before the committee of Parliament or commission appointed by the Parliament.

68. Emoluments, allowances, privileges and rights in respect of leave or absence of the President and Governors, Salaries and allowances of the ministers of the Union; the salaries, allowances and rights in respect of leave and other conditions of the service of the Comptroller and Auditor-General of India.

69. Audit of the accounts of the Union and the states.
70. Constitution, organisation, jurisdiction and powers of the Supreme Court including contempt of such court and the fees taken therein; persons entitled to practice.

71. Constitution and the Organisation of the High Courts, expect provisions as to officers and servants of the High Courts; persons entitled to practice before the High Courts.

72. Extension of the powers and jurisdiction of members of a police force belonging to any state or to any outside that state, but not so as to enable the police of our state to exercise powers and jurisdictions in any area outside that state without the consent of the Government of the state in which area is situated; extension of the powers and the jurisdiction of members of a police force belonging to any state to railway area outside the state.

73. Inter-state quarantine.

74. Taxes on income other than agricultural income.

75. Duties of custom including export duties.

76. Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human consumption and opium, Indian hemp and other narcotic drugs.

77. Corporation tax.

78. Taxes on capital value of assets, exclusive of agricultural land of individuals and companies; taxes on capital of companies.

79. Estate duty in respect of property other than agricultural land.

80. Duties in respect of succession to property other than agricultural land.

81. Terminal taxes on goods or passengers, carried by railway, sea or air; tax on railway fares and freights.

82. Taxes other than stamp duties on transactions in stock exchanges.

83. Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lending, letters of credit, policies of Insurance, transfer of shares, debentures, proxies and receipts.
84. Taxes on the sale and purchase of newspapers and on advertisements published therein.

85. Taxes on sale and purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce.

86. Offences against laws with respect to any of the matters in this list.

87. Enquiries, surveys and statistics for the purpose of any of the matters in this list.

Similarly, in the Concurrent List, the powers enumerated for the Concurrent jurisdiction of the Union Government and the state of Jammu and Kashmir is the following:

(i) Removal from one state to another state of prisoners, accused persons and persons subjected to preventive detention for reasons specified in entry 3 of this list.

(ii) Administrator-General and official trustees.

(iii) Lunacy and mental deficiency, hospitals for the treatments of lunatics and mentally deficient.

(iv) Adulteration of food stuffs and other goods

(v) Drugs and poisons, subject to the provisions of entry 59 of central list with respect to opium.

(vi) Trade unions: industrial and labour disputes.

(vii) Social security and insurance; employment and unemployment.

(viii) Welfare of labour including conditions of work, provident funds, employer’s liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.

(ix) Vocational and technical training of labour.

(x) Legal, medical and other professions.

(xi) Vital statistics, including registration of births and deaths.

(xii) Trade and commerce and the production supply and distribution of:
(i) the products of any industry where the control of such industry by the union is declared by Parliament by law to be expedient in the public interest and imported goods of the same kind as such products;

(ii) food stuffs, including edible oils-seeds and oils;

(iii) cattle fodders including oil cakes and other concentrates;

(iv) raw cotton, whether ginned or unginned and cotton seeds; and

(v) raw jute.

(xiii) Price control.

(xiv) Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied.

(xv) Factories.

(xvi) Newspapers, books and printing presses.

(xvii) Inquiries and statistics for the purposes of any of the matters specified in the list.

(xviii) Jurisdiction and powers of all courts, except of any of the matters specified in this list.

(xix) Fees in respect of any of the matters in this list, but not including fees taken in any court.

Thus the legislative competence of Parliament in respect of the state of Jammu and Kashmir is limited to certain subjects mentioned in the Union List (List I) and the Concurrent List (List III). So there are subjects both in Union list and Concurrent list over which Parliament is not competent to legislate and on such subjects State legislature has exclusive power to legislate.

In Union List following are the subjects over which parliament has no legislative power:

(i) The Central Bureau of Intelligence and investigation is not applicable to Jammu and Kashmir.

(ii) Parliament has no power to legislate regarding preventive detention for reasons connected with defence, foreign affairs or the security of India in relation to Jammu and Kashmir. Since the ‘Preventive detention’ for other
reasons is on the Concurrent List, no law of preventive detention made by parliament can automatically extend to the state of Jammu and Kashmir.\(^{30}\)

(iii) Parliament cannot legislate for the state of Jammu and Kashmir in respect of a court of wards for the estates of the Maharaja.\(^{31}\)

(iv) While Parliament may legislate in respect of incorporation, regulation and the winding up of banking insurance and financial corporations, but not with respect to co-operative societies.\(^{32}\)

(v) Parliament cannot declare that the control by the Union of any industry or regulation of mines or mineral development in the state of Jammu and Kashmir is expedient in the public interest. However for other states of India, Parliament is empowered to encroach upon the state powers over industries and mines by declaring that control of a particular industry or regulation of some aspect of mineral development by it is in the public interest.\(^{33}\)

(vi) Laws made by Parliament for the censorship of cinematograph films\(^{34}\) do not extend to the state of Jammu and Kashmir. All matters relating to the cinema are under the exclusive jurisdiction of the state.\(^{35}\)

(vii) Parliament cannot legislate in regard to ancient and historical monuments or archaeological sites and remains in Jammu and Kashmir state.\(^{36}\)

(viii) Parliament cannot legislate with respect to election to the legislature of the state.\(^{57}\) The state of Jammu and Kashmir had its own election laws and it was felt that the Union election laws were not suitable to the state. However by the Act 19 of 1959,\(^{38}\) the jurisdiction of the Union Election Commission was extended to Jammu and Kashmir but appointment of the Election Commissioner for the state had to be made by the Sadar-i-Riyasat (now the Governor) to function under the laws of the state.

(ix) Originally Parliament had no power over the audit of the accounts of the state.\(^{39}\) However by mean of Constitution (Application to Jammu and Kashmir) Order, in 1956, Article 149 and 150 of the Constitution of India, which deals with the powers and duties of the Comptroller and Auditor-General of India, were extended to the state of Jammu and Kashmir.\(^{40}\)
Parliament cannot legislate on the Constitution, Organisation and Jurisdiction of the High Court of the state of Jammu and Kashmir.\(^{41}\) But under the Jammu and Kashmir Constitution of 1957, the appointment of the Judges of the Jammu and Kashmir High Court is made by the President of India by warrant under his hand and seal, after consultation with the Chief Justice of India and the Governor of Jammu and Kashmir.\(^ {42}\)

Parliament cannot legislate with regard to interstate migration or quarantine in regard to Jammu and Kashmir.\(^ {43}\)

Thus, the legislative powers of the state legislature of Jammu and Kashmir extended to all matters except those with respect to which the state has consented to Parliament’s making laws for it under the provisions of the Constitution of India.\(^ {44}\) The Concurrent List (List III) was not made applicable to the state under the original Constitution Order of 1954. This order was amended by the Constitution (Application to Jammu and Kashmir) Order, 1963 and subsequent orders, whereby the Concurrent list has been made applicable to the state to some extent.\(^ {45}\)

Following are the subjects in the Concurrent List over which Parliament cannot legislate:

(i) Criminal law, “Extending offences against laws with respect to any of the matters... specified in List I and excluding the use of naval, military or air force or any other armed forces of the Union in aid of the civil power in so far as such criminal law relates to offences against laws with respect to any of the matters specified in the concurrent list.”\(^ {46}\)

(ii) Civil procedure in so far as it relates to the administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country.

(iii) Civil procedure in so far as it relates to the administration of oaths and taking of affidavits by diplomatic and consular officers in any foreign country.

(iv) Vital statistics in so far as they relate to births and deaths.

(v) Acquisition and requisition of property.\(^ {47}\)

Those subjects of the Concurrent List over which both Parliament and the State Legislature of Jammu and Kashmir has power to legislate, in the event of conflict between a law made by Parliament and a law made by the State Legislature of
Jammu and Kashmir, the law made by the Parliament will prevail.\textsuperscript{48} The List II (State List) is not applicable to the Jammu and Kashmir state.\textsuperscript{49}

**Residuary Powers of Legislation**

Under the Government of India Act, 1935, the residuary powers of legislation were vested neither in the Centre nor in the provinces, but vested in the Governor-General who could by notification empower either to legislate on a matter within the residual field.\textsuperscript{50} Further under the Constitution of India, the residuary powers belong to the Centre. This means Parliament has exclusive power to make laws with respect to any matter not enumerated in the Concurrent List or the State List, including the power of making any law imposing a tax not mentioned in either of these lists. This power of the Union Government is supported by item 97 of the Union List, which reads: Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists.

As far as State of Jammu and Kashmir is concerned, the residuary power of legislation belongs to the state legislature, which would legislate on any matter not enumerated in the Union List. So ‘Item 97’ of the Union List is not applicable to the Jammu and Kashmir.\textsuperscript{51} The Parliament has residuary power in relation to the state of Jammu and Kashmir only to the extent as provided in Article 248 which has been applied to the state in a modified form. Under Article 248, Parliament has power to make any law with respect to:

I. Prevention of activities involving terrorists acts directed towards overthrowing the government as by law established or striking terror in the people or any section of the people or alienating any section of the people or adversely affecting harmony amongst different sections of the people. Prevention of other activities directed towards disclaiming, questioning or disrupting the sovereignty and territorial integrity of India or bringing about cession of a part of the territory of India or secession of a part of the territory of India from the Union or causing insult to Indian National Flag, the Indian National Anthem and the Constitution (Constitution of India)

II. Taxes on foreign travel by sea or air; inland air travel; postal articles, including money orders, phonograms and telegrams.\textsuperscript{52}
Thus the division of the legislative powers envisaged by the Constitution of India is conclusive and neither the Union government nor the State governments can change or modify it except by a constitutional amendment. In case, any of the state governments overstep the limits of their authority or the Union Government oversteps the limits of its authority, such acts are ultravires of the powers of the two governments and therefore void.\textsuperscript{53}

**Legislation by Parliament on State List under Special Circumstances**

Usually, the administration of powers in a federation between the centre and the states is rigid, as the balance drawn between them cannot be changed unilaterally by any one of them. The process of Constitutional amendment is also rigid and is not capable of being effectuated easily. Gradual adjustments in the balance of Power is effected by the process of judicial interpretation, but there are certain exceptional times when it fails to make the needed adjustments to meet the situations at hand. The Indian Constitution contains a few unique provisions, for making temporary adjustments in the scheme of centre-state distribution of powers which introduce an element of flexibility in an inherently rigid federal structure. So there are certain circumstances under which the Parliament is empowered to legislate on the subjects in the State List.\textsuperscript{54}

I. **Legislation in the National Interest**

Article 249 provides for a lawful legislation by Parliament in the State List, if the Rajya Sabha has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution. The Parliament can legislate in a state matter for a year and each time the council passes the resolution, the power can be further extended for a year.\textsuperscript{55}

In relation to the state of Jammu and Kashmir the Article 249 did not apply, as per the Constitution (Application to Jammu and Kashmir) Order, 1954. So Parliament had no power to legislate in relation to the state of Jammu and Kashmir in national interest in the manner provided in Article 249. This article has been extended to the state of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir) Amendment Order, 1986. In clause (1) of this article for the words “Any matter
enumerated in the State List specified in resolution”, the words “any matter specified in the resolution being a matter which is not enumerated in the Union List or in the Concurrent List”, were substituted. Thereafter the Parliament has the jurisdiction to legislate in the national interest by passing a resolution in the council of states with respect to the state of Jammu and Kashmir like other states of the Indian Union.56

II. Parliament’s Power to Legislate with the Consent of the States

Article 250 of the Constitution enables the Parliament to legislate on matters enumerated in the State List. According to this article if the legislatures of two or more states desire that parliament should regulate on their behalf any of the matters with respect to which it ordinarily has no power to make laws for them and if a resolution to that effect is passed by both houses of legislature of those states, it would be lawful for Parliament to comply. Any such law passed by the Parliament applies only to the states which have made the request or which have subsequently adopted the law. It cannot be amended or repealed by the legislatures of the states to which it applies.57

Thus the actual effect of this article is enlargement of the legislative power of Parliament by the consent of the states. India is a vast country with different customs, traditions and cultures with constituent units in varying stages of social and economic development. Hence, there exists a great need for coordination in the efforts of contiguous states. Such harmony and coordination can be achieved by the consenting units by using the agency of the union. For instance, in matters affecting public health, agriculture, fisheries, forests etc. which are exclusively subjects of the states, contiguous states may find it desirable, if not necessary, to have similar laws.58

By passing such a resolution a state legislature surrenders its power only with respect to particular matter which is the subject of resolution. This provision has not been used so frequently. For instance, in order to have a uniform law for control and regulation of prize competitions, the states of Andhra Pradesh, Bombay, Madras, Orissa, Uttar Pradesh, Madhya Pradesh and Punjab passed a resolution authorising parliament to enact the requisite legislation. The resolutions became necessary because usually these competitions were run by out of state journals which a state law could not effectively control and thus a uniform control law was needed to effectively regulate prize competitions. Accordingly, Parliament enacted the Prize Competitions Act, 1955.59
Similarly, fifteen states have authorised the Parliament under Article 252 of the Constitution to pass a law to control the Pollution of rivers and streams which has assumed considerable importance and urgency in the recent years as a result of increasing industrialisation and urbanisation. Accordingly Parliament enacted the Water Prevention and Control of Pollution Act, 1974.

III. Legislation for giving Effect to International Agreements

Article 253 empowers the Parliament to make law for the whole or any of the part of the territory of India for implementing treaties and international agreements. In case of the State of Jammu and Kashmir, the provision to Article 253 of the Constitution of India explicitly denies power to the Union Parliament to dispose of any part of the territory of the state of Jammu and Kashmir without the consent of the government of the state.

Unlike the provisions to Article 3, which requires only consent with the legislature of the state before effecting any change in the name, boundary or area of the state, the provision to Article 253 requires the consent of the government of the state. This means that the power of the Union Parliament to dispose of any part of the territory of the state of Jammu and Kashmir in consequence of any international agreement or treaty under Article 253 is also limited. No law affecting the disposition of the territory of the state of Jammu and Kashmir can, therefore, be valid unless passed with the previous consent of the state government.

IV. Legislation during Proclamation of Emergency

The Indian Constitution makes provisions for the centre assuming all state powers of legislation, irrespective of the consent of the council of states or of the state legislature when a proclamation of emergency is in operation.

Article 355 provides that it shall be the duty of the union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. Thus powers conferred by Article 352 and 356 and the connected provisions on the Union are clearly for the purpose of enabling the Union to discharge the heavy responsibilities laid on it. Article 250 empowers the parliament, while a proclamation of emergency is in operation to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State list.
A proclamation of emergency disturbs the normal distribution of powers between the Centre and the states. A law made by parliament during a proclamation of emergency cease to have effect on the expiration of period of six months after the proclamation has ceased to operate. During the proclamation of emergency under article 352, the legislative power of parliament in relation to Jammu and Kashmir will extend to any matter, as in the case of other states in India and laws of the state which are inconsistent with any such law made by parliament shall, to the extent of such repugnancy be inoperative.66

But Article 356 of Indian Constitution was extended to the state of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir) 3rd Amendment Order 1964 on 21st December, 1964. This Order had been issued by the President of India with the Consent of State Legislature.

V. Presidential Veto over State Legislation

The Indian Constitution enables the Union Executive, under certain circumstances to exercise control over legislation passed by the state legislature. Apart from the mandatory provisions, there is Article 200 dealing with the assent by the Governor to bills passed by the legislature which provides that he may reserve a particular Bill for consideration of the president. Once a bill so reserved, the president may either give his assent or withheld it or he may direct the Governor that the bill be placed before the legislature for reconsideration in accordance with message to the House. There are also certain other provisions in the Constitution which require either that bills on certain state subjects shall not be introduced in the legislative Assembly of the State without the previous sanction of the President or that certain legislation, though competent to the State, must be reserved for the assent of the President in order to obtain validity. There is no time limit provided for Presidential veto and the president need not give any reason for exercising his veto.67

Under Article 255 of the Constitution of India a bill shall not be introduced without the recommendation or previous sanction of the President, the subsequent assent to that bill, shall prevent the later from becoming void. The requirements as to recommendation and previous sanction, to be regarded as matters of procedure only. In other words, if an act is passed without obtaining the previous assent of the President, it does not become void by reason of the procedural infirmity. The law
remains unenforceable until the assent is obtained. The procedural infirmity is cured by the subsequent assent and the law becomes enforceable.

Article 255 is not applicable to the State of Jammu and Kashmir with the result that those provisions of the Constitution which require previous recommendation or sanction of the president shall be regarded as mandatory. The absence of such recommendation or sanction will invalidate the law which is made without it. The framers of the Constitution have incorporated the federal principle in our constitution in a modified form in light of the experience of the other federations and in view of the peculiar requirements of our country. This modification is certainly towards establishing the cooperative federalism, wherein, the national and the State Governments function as cooperator of each other.

The centre and the states cooperate in the field of concurrent legislative powers. When Parliament enacts a law on a matter within the concurrent list, the states are generally kept informed, copies of bills are sent to them. But no regular consultation is made before the legislation is enacted although any state may send representation expressing its point of view. However, when a state legislates in a concurrent sphere, a convention has grown up that the States will usually consult the Central government before proceeding with the legislation. This procedure is followed by the states in order to avoid conflict with any central law on the same subject or any other subject.

Thus after independence India adopted a federal kind of political structure. In legislative relations between the Union and the States, the Parliament of India was given the upper hand. However, an exception was made in case of the state of Jammu and Kashmir. The state legislature in Jammu and Kashmir enjoys wider powers than the legislatures in other states. The division of powers as laid down in the Constitution of India is not entirely applicable to the State of Jammu and Kashmir. Out of the three lists viz, the Union list, state List and Concurrent List, the state list is not applicable to the state of Jammu and Kashmir and a law that may be enacted by parliament in respect of the subjects given in the Union List and the Concurrent List cannot apply to the state of Jammu and Kashmir without the consent of the state. The legislature of Jammu and Kashmir has residuary powers unlike the legislatures of the other states of India. If the State legislature of Jammu and Kashmir legislates in respect of any of the subjects lying within its residuary powers, such legislation cannot be declared null.
and void even if it contravenes a law pass by parliament. Finally all laws relating to subjects where the Union Parliament has the right to legislate for the State of Jammu and Kashmir apply to the State only after the consent of the State legislature.  

The Administrative Relations

A federal scheme involves the setting up of dual governments and division of administrative powers. But the success of federal polity depends upon the maximum of cooperation and coordination between the governments in the administrative relations. However, the adjustment of administrative relations between the Union and the States is one of the knottish of the problems in a federal government. The framers of the Indian Constitution therefore decided to include detailed provisions to avoid clashes between the centre and the states in the administrative domain. In order to ensure smooth and proper functioning of administrative machinery, they also made provisions for meeting all types of eventualities, resulting through the working of federalism or emergence of new circumstances due to difference of opinion between the dual authorities. Moreover, the Union Government was to be responsible for maintaining peace and order in the country. Therefore, cooperation and coordination between the Central and the state administrative authorities was thought indispensable.

The Indian Constitution enshrines provisions for the division of executive power between the Centre and the States. The executive Power of the Centre extends primarily to matters with respect to which parliament has power to make laws, but the centre is not bound to administer all these matters itself and can, if it so desires, entrust the responsibility of administering any of these matters to the states or their instrumentalities by legislation. The executive powers of the states extend to all matters within their exclusive legislative domain, but they may leave any of their functions to the Centre for administration by agreement with it. The administration of the matters in the concurrent list rests with the states in the first instance but Parliament may, by passing a law, enable the Centre to assume responsibility for administration of any of these functions.

In the concurrent field, therefore, parliament may take one of the three courses in reference to the enforcement of the legislation. It can leave it entirely to the state or it may take over the whole of the task of enforcing it by making an express provision in the relevant law; or it may take upon itself the enforcement of a part of the law,
leaving the rest of it to the states for enforcement. Thus ordinarily in the concurrent area, powers of administration remain with the states even when the law is passed by the centre. In this way the centre acquires the cooperation of the states in administrative matters through union agencies in the states, through issuing directions to the states, through delegation of Centre’s functions to the states and vice versa and through full faith and credit clause.

I. Distribution of Executive Powers

As Union Government is responsible for the governance of the country, so it becomes important that there should be effective administrative nexus between the Union and the States. For this the Indian Constitution has devised a number of techniques for ensuring the Control of the Union over the administrative authority of the states.

The directions by the centre to the states play a very important role in the day to day working of Indian Federalism. The basic aim of the administrative relations is to avoid conflict and promote harmony between the centre and the states. The Central government has power to give directions to the States to enforce central laws in respect of construction and maintenance of communication of national and military importance, railways, the welfare of schedule tribes, education of linguistic minorities etc. The Central Government may give following directions to the State of Jammu and Kashmir.

(i) To ensure compliance with the laws made by the Parliament.
(ii) To ensure that the exercise of the executive power of the State does not interfere with the exercise of executive power of the Union.
(iii) To ensure construction and maintenance of means of communications declared to be of national and military importance.
(iv) To ensure protection of railways within the State.
(v) If so required by the Union, the State of Jammu and Kashmir shall acquire property within the state on behalf and at the expense of Union or if the property belongs to the state, transfer it to the Union on such terms as may be agreed or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.
The Constitution of India also provides a sanction against non-compliance by the State governments. Article 365 provides that in case of non-compliance by the states, the president is empowered to make a proclamation under Article 356 that the Constitutional machinery has failed where upon the coercive provisions of the article will come into action.\textsuperscript{81}

But this Article 365 has not been made applicable to the state of Jammu and Kashmir. It means that though the union government can issue directions to the State government, but it has no powers to enforce or secure compliance of those directions. The union government cannot initiate action against the state governments by taking recourse to article 356 as it can do in case of other states. The Union government has no power to suspend the constitution of the state on the ground of failure to comply with the directions given by the Union government under Article 365. However, the Union government may indirectly put pressure on the state by reducing the grants-in-aid given to the State. In the ultimate analysis it can be said that the Union government will have to seek cooperation from the state government in order to avoid conflict and promote harmony in centre-state relations. The national interest has to be balanced with the autonomy of the state of Jammu and Kashmir.\textsuperscript{82}

II. Full Faith and Credit Clause

There may arise a great confusion and inconvenience in the working of a federation, if a particular state refuses to recognize the records and acts of another state. To eliminate such ominous possibility the Constitution of India under Article 261 provides the ‘full faith and credit clause.’\textsuperscript{83} The ‘Full faith and credit’ is to be given throughout the territory of India to Public Acts, records, judicial proceedings of the Union and the States.\textsuperscript{84}

Article 261 (2) empowers the Union Parliament to lay down through its laws the manner in which and the conditions under which these acts and records shall be proved and their effect determined.\textsuperscript{85} However, in case of Jammu and Kashmir, Article 261 applies with modification. It is the state legislature instead of Parliament which has the power to lay down the manner in which and the conditions under which the acts, records and proceedings of the Union or of any other State shall be proved in Jammu and Kashmir and the effect thereof. Clause 3 of Article 261 provides that final judgements or orders delivered or passed by Civil Courts in any part of territory of India shall be capable of execution anywhere within that territory according to Law.\textsuperscript{86}
Thus, the full faith and credit clause is an important expedient which serves the very useful purpose of preventing any possible obstruction to the normal transaction of administrative business in the Indian federation.

III. Disputes Relating to Waters

Article 262 of the Constitution of India empowered the Union government to deal with the waters of inter-state rivers and river valleys. So Parliament enacted the interstate water dispute Act, 1956 (33 of 1956). This Act empowers the Central government to set up a tribunal for the jurisdiction of water disputes. The decision of the tribunal shall be final and binding on the parties to the dispute. Section 11 of the Act excludes the jurisdiction of the Supreme Court in respect of a water dispute referred to the tribunal. But the Supreme Court can direct the Central government to fulfil its statutory obligation to set up a tribunal under the Act which is mandatory.

Article 262 and the inter-state water Disputes Act, 1956 apply to the State of Jammu and Kashmir. This article was not made applicable to the state under 1950 order but was subsequently extended.

IV. Inter State Council

Controversies inter-state and between the centre and states, are normal in countries governed by federal constitution. Article 263 empowered the Union Government to establish an inter-State council for securing coordination between the States. The main functions of inter-state council are:

(i) To inquire into and advice upon disputes which may have arisen between States;

(ii) To investigate and discuss subjects in which some or all of the states or the Union and one or more of the states have a common interest.

(iii) Making recommendations for coordination of policy and action relating to such subjects.

The Constitution gave limited duties to the inter-state council. They are advisory in the case of inter-state disputes and recommendatory in the case of subjects having a common interest. It is useful device to sort out differences between the governments at centre and the states and between the states and take decisions in the national perspective. Article 263 is applicable to the state of Jammu
and Kashmir. The state of Jammu and Kashmir is a member of the North Zone Council.

V. All India Services

The Article 312 of the Constitution of India deals with the All India Services. By the Constitution (Application to Jammu and Kashmir) 2\textsuperscript{nd} Amendment order, 1958 the All India Services i.e. Indian Administrative Services (IAS) and Indian Police Services (IPS) cadres were established in the state of Jammu and Kashmir. IAS and IPS occupied important positions in the state administration that after gaining rich experience of the district and state administration can migrate to the centre to occupy positions of responsibility in the Central secretariat or other important central government agencies. This arrangement, that an All India Service shall manage affairs both in the states and at the centre, brings cooperation in the administration at state and central level. This also brings efficiency and uniformity in the administration of the country as a whole. No serious disciplinary action can be taken against a member of the IAS by a state government without the concurrence of and approval of the centre. These ‘All India Services’ will continue to exist even in the changed context of centre-state relations in India, with different political parties in power in the centre and in the states.

The Union government will have to seek cooperation of the State (irrespective of party considerations) for fulfilling certain national goals like economic planning, agrarian reforms, family planning and fight against unemployment. In this situation, the All India Service officer will tell his state leaders that so much may be accepted by the centre and so much of cooperation with the centre is in the interest of the state. He will also tell his counterpart in the centre that his state government will accept a certain issue up to a certain extent and not beyond that. The All India service officer will place the right demands of the state before the Centre and convince the state that the Centre will not accept more than the specific limit. Because the All India Service is an integrated service, the All India service officer in the state has his counterpart in the centre and because both belong to the same service, all sorts of tensions between the centre and the state are likely to be resolved to a certain extent through the instrumentality of the All India Service.

All India Services greatly contributed to the unity of India. The all India composition of the services with personnel drawn from all the states emphasizes the
unity of India and encourages the development of a national point of view. Equally, it ensures that the administration of every state has a leavening of officers from outside whose vision and outlook are not circumscribed by a parochial horizon. The control of these officers (All India Services) vests jointly in the state and the Union governments. Therefore these officers are able to fulfil their responsibilities without being subjected unduly to the stresses and strains of local influence. Further the rotation of officers between the Centre and the states provides a link between the two and leads to a greater understanding of each other’s problems. An officer who returns to the state after a spell in the central secretariat enriches the state’s administration with his wider experience and perception of the problems of central administration.\(^{100}\)

VI. **Union Agencies in the States**

The object of Union agencies operating in the states is to ensure greater interstate and centre-state cooperation and implementation of the policies of the Central government through these agencies. These also enable the Central Government to exercise a Control over the States in matters of execution of central laws.

(i) **Governor as Agent of the President**

The Institution of Governor is an important agency through which the Union government exercises its control over the states. The Governor is appointed by the President holds office during his pleasure and thus represents the centre in the states.

As a representative of the centre it is the duty of a Governor that he must keep the Centre informed of the affairs of his State whenever he feels that such things are going on which can endanger the unity of the country. For this purpose the Governors send fortnightly reports to the President.\(^ {101}\)

So, it is the moral responsibility of the Governor to ensure that the administrative machinery in the State is working in accordance with the constitution of India and in tune with the spirit of the laws of parliament. It is also his duty to ensure that the directions and instructions given by the Union government are being properly carried out. To enable him to fulfil these responsibilities, he is vested with some discretionary powers. These are:

(i) The power to dismiss the Chief Minister.
The power to prorogue and summon the assembly and

The power to dissolve the assembly.\textsuperscript{102}

The Union government too has the duty to ensure that the government of every State is carried on in accordance with the provisions of the Constitution. It has no agency in the state other than the governor, to keep it informed of the happening there and whether the government is being carried on in accordance with the provisions of the Constitution. In the event of a constitutional break down, the Governor is expected to make a report to the President and can advise him to assume the functions of the state government.\textsuperscript{103}

In case of Jammu and Kashmir State, the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 introduced the office of the Governor in the State. Before this amendment, the Head of the State was known as Sadar-i-Riyasat and was elected by the state legislature. One of the qualifications for being elected as Sadar-i-Riyasat of the state was that the person concerned should be a permanent resident of the state. Under the amended section, the Governor need not to be permanent resident of the state, the essential requirement is that he must be a citizen of India.\textsuperscript{104}

Thus, the Constitution makers, very rightly and deliberately appear to have chosen that the Governor of a state shall be appointed by the President and shall hold office during his pleasure in order that the Governor, as it were, be a powerful link between the Centre and the State. Obviously, it is a measure adopted “\textit{to ensure harmonious and cooperative relations between the Centre and the State in accordance with the general scheme of cooperative federalism provided under the Indian Constitution}.”

\textbf{(ii) Jurisdiction of Supreme Court}

Article 131 of the Constitution of India confers original jurisdiction on the Supreme Court in respect of any dispute.

\begin{itemize}
  \item[(i)] Between the Union government and one or more states;
  \item[(ii)] Between two or more states
\end{itemize}

Thus, the original jurisdiction of the Supreme Court covers all disputes in respect of justiciable issues between any two government established under the constitution.\textsuperscript{105} Under Article 133 of the Constitution of India the Supreme Court has
appellate jurisdiction in civil cases. Under Article 134 of the constitution of India the Supreme Court has appellate Jurisdiction in criminal cases.\textsuperscript{106}

**Appeals by Special Leave**

The Constitution of India under Article 136 empowered Supreme Court to grant in its discretion special leave to appeal from the Judgement, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal other than a court martial.\textsuperscript{107}

**Advisory Jurisdiction of the Supreme Court**

Under Article 143 of the Constitution of India the President may refer any question of law or fact, which has arisen or is likely to arise to the Supreme Court for its consideration and opinion thereon. Clause 2 of the article authorises the President to refer to the Supreme Court for opinion any dispute arising out of any provision of a treaty, covenant, Sanad or other similar instrument which was concluded between an Indian state and the Government of India before this Constitution came into force.\textsuperscript{108}

**Writ Jurisdiction**

Article 32 of the Constitution of India empowers the Supreme Court to issue writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the purpose of enforcement of the Fundamental Rights and Article 139.\textsuperscript{109} As far as the state of Jammu and Kashmir is concerned the Supreme Court of India occupies the same position and status in Jammu and Kashmir state as in the rest of India and is the final court of appeal for this state also.\textsuperscript{110} The civil and judicial authorities of the state act in aid of the Supreme Court.\textsuperscript{111}

The original and appellate Jurisdiction of the Supreme Court extends to the state of Jammu and Kashmir with a slight modification that the appellate jurisdiction in criminal matters would not be increased by parliament by law except at the request of the State legislature. Thus, any additional powers which are conferred on the Supreme Court of India would extend to the state of Jammu and Kashmir only if there had been a request from the state legislature to the effect. It will be observed that the clause provides for a ‘request’ from the state legislature before Parliament extends the powers of the Supreme Court in relation to the state and it would seem that if parliament enacted such legislation without such request, it could not be validated by subsequent ratification by the state legislature.\textsuperscript{112}
The right to appeal by special leave under Article 136 of the Constitution of India has been extended to the state of Jammu and Kashmir with effect from 26th January, 1960. Thereafter the Supreme Court occupies same position and status in matters of its jurisdiction in the state of Jammu and Kashmir, as it has in other states of the Indian Union.\textsuperscript{113}

Article 141 provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The decisions of the Supreme Court are thus binding on the High Court and the subordinate courts in the State of Jammu and Kashmir and cannot be ignored on the ground whatsoever and apply to all cases whether pending for future. The state and its officers are also obliged to respect and follow the judgements of the Supreme Court. Further the advisory jurisdiction of the Supreme Court under Article 143 extends to the State from the commencement of the Constitution (Application to Jammu and Kashmir) order 1954.

In 1954 the government of Jammu and Kashmir agreed to adopt, with some variations, the fundamental rights as incorporated in the Constitution of India. This incorporation of the fundamental rights would have become meaningless if there was no way of redressing their infringement. Accordingly, Article 32 which confers upon the Supreme Court the requisite powers for the enforcement of the fundamental rights by issuing writs, orders or directions, was extended to Jammu and Kashmir. To ensure the enforcement of the fundamental rights within the territorial jurisdiction of the state, the Jammu and Kashmir High Court was granted power to issue writs, order or directions.\textsuperscript{114}

The main purpose of extending the writ Jurisdiction of the Supreme Court to Jammu and Kashmir was to secure the enforcement of the fundamental rights only, so article 139 of the Constitution of India, which deals with the powers of parliament to confer authority on the Supreme Court to issue orders, directions and writs of the nature mentioned in article 32, for any other purpose and cases in which no fundamental rights were involved, was not made applicable to Jammu and Kashmir.

(iii) **High Court as an Agency for Administration of Justice and Union Laws**

The High Courts in each state are union courts. The Constitutions provides that every judge of the High Court shall be appointed by the president after consultation with the Chief Justice of India, the Governor of the state and in case of
appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court. Parliament may by law establish a Common High Court for two or more States. For example the states of Assam and Nagaland have a Common High Court. Punjab and Haryana also have a common High Court. It follows that the administration of justice falls entirely within the state’s sphere, whether a matter relates to civil law or criminal law and whether such law is enacted by the Parliament or by a state legislature.

A High Court being a central agency, administers both the central as well as state laws and by doing so, creates a sense of cooperation between the centre and the states in the field of administration of Justice. Similarly a joint High Court also creates a notion of intergovernmental cooperation. In case of Jammu and Kashmir the provisions of the Constitution of India relating to the High Court do not apply to the state in entirety except for the following matters:

(i) The Judges of the state High Court can be appointed and removed from office in the same manner as judges of any other High Court.

(ii) Restriction on retired High Court Judges to plead and act before any court or authority except the Supreme Court and other High Courts apply to judges of the state High Court.

(iv) A judge of High Court may be transferred to or from the state High Court after consultation with the Governor.

The state has very limited role in the appointment and transfer of judges of High Court and no role in the removal of a judge of the High Court.

(iv) Emergency Provisions

1. Emergency arising out of war or internal Disturbance

   Under Article 352 of the Constitution of India if the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory of India is threatened whether by war, external aggression or internal disturbance, he may, by a proclamation make a declaration to the effect.

   Under Article 353 and 354 of the Constitution of India following are the effects of emergency:
(i) The state government would come under the complete control of the Union government, which would have the authority to give directions to the state government on any matter. India functions as a unitary state rather than a federal state.\textsuperscript{119}

(ii) The Union Parliament shall have the power to legislate as regards any matter to which the jurisdiction of the state extends.

(iii) The emergency affect the financial position of the Union, provision has been made for modifying the provisions relating to distribution of revenues between the union and the states, to secure adequate revenues for the Union to meet the new situation.\textsuperscript{120}

As far as the state of Jammu and Kashmir is concerned, the effect of a proclamation of emergency would be the same as in the rest of India but the grounds of issuing a proclamation are restricted. Clause (6) of Article 352 controlled the President’s power of issuing a proclamation. No proclamation of emergency made on grounds only of internal disturbance or imminent danger in case of Jammu and Kashmir (except under Article 354 i.e. distribution of revenue) unless:

- It is made at the request or with the concurrence of the Government of that State.
- Where it has not been so made, it is applied subsequently by the President of that State at the request or with the concurrence of the Government of that state.\textsuperscript{121}

Thus, when President issues the proclamation of emergency on the grounds of war or external aggression, there is no requirement of the request or concurrence of the State government. But in case of internal disturbance, President issues proclamation only on the request of state government.

2. \textbf{Emergency arising out of breakdown of Constitutional machinery in the state}

Article 356 relating to failure of constitutional machinery in the state did not apply to the state under the original Constitutional Order of 1954. The Constitution of India empowered the President to make proclamation, if he is satisfied that the government of the state cannot be carried on in accordance with the provisions of the Constitution of India or the constitution of the State. The Article 356 applied to the state of Jammu and Kashmir by the Constitution (Application to Jammu and Kashmir)
3rd Amendment Order, 1964. When a proclamation under Article 356 is in operation, Parliament becomes entitled to legislate on matters not enumerated in the Union List.

Further the Union government is under a duty to ensure that the government of the state is carried on in accordance with the provisions not only of the Indian Constitution which have been made applicable to it, but also in accordance with the provisions of its own Constitution. Thus, the Union government is under a constitutional obligation to ensure that the state government is carried on in accordance with the provisions of both the constitution. Thus, there is no scope for the centre to suspend the state Constitution on the grounds of failure of constitutional machinery in the State.

3. Financial Emergency

Under Article 360 of the Constitution of India, if President is satisfied that the financial stability or credit of India or any part thereof is threatened, he may by a proclamation of emergency declare a state of financial emergency. In such a case all the provision of Article 352 apply. However, the provisions of Article 360 are not applicable to the state of Jammu and Kashmir. Thus, the President of India cannot interfere in the financial affairs of the state.

Thus we conclude that in case of administrative relations between the centre and state of Jammu and Kashmir, the state is covered by the same scheme as the other states. The techniques devised by the Constitution to ensure the control of the Union over the administration of the states are applicable to the state of Jammu and Kashmir also.

However, in spite of their application without any significant variation, there are some articles like 256, 257 and 365 where the state has its own way. Article 256 and 257 say that the state shall facilitate discharge by the Union of its duties and responsibilities. This means that whereas parliament can acquire or requisition property in other states by law, it must in Jammu and Kashmir depend upon the active cooperation of the state government because item 42 on the Concurrent List is not applicable to the state of Jammu and Kashmir. Further, the Union government can give directions to the other states and can also enforce compliance by exercise of the powers mentioned in article 364, but it cannot do so in the case of the state of Jammu.
and Kashmir as article 365 is not applicable to the state. It can only depend on the goodwill of the state government of Jammu and Kashmir.

Also it is the state legislature, not the Union Parliament, which has the power to lay down the manner in which, and the conditions under which, the public acts, records and judicial proceedings of the Union or of any of the other states will have effect in the state of Jammu and Kashmir. The Governor of the state of Jammu and Kashmir does his duties and exercises his discretionary powers only within the framework of the Constitution of Jammu and Kashmir whereas the Governors of other states act according to the provisions of the Constitution of India.

In relation to the proclamation of emergency provision to the state of Jammu and Kashmir, the Centre cannot proclaim a state of emergency on account of internal disturbance in the state of Jammu and Kashmir without the concurrence of the state. Thus in the field of administration also the State of Jammu and Kashmir is distinguished from the rest of the states of India by being allowed a special position of its own.

**The Financial Relations**

The study of relationship between the Union and state of Jammu and Kashmir is incomplete without an examination of the financial relationship between the two. The Constitution of India makes elaborate provisions in respect of the financial relations between the Union and the states. The powers of the Union government and State governments to levy taxes are separately defined and made mutually exclusive. No area of concurrent jurisdiction is left though provisions are made to empower the Union to levy and collect certain taxes and share certain tax returns with the states.\(^{127}\)

So far as financial powers are concerned, the Constitution of India, 1950, is generally patterned on the provisions of the Government of India Act, 1935, under which the income tax, other than agricultural income-tax and corporation law were imposed and collected by the centre, though the provinces were entitled to a share in the net proceeds. The Constitution of India also follows the 1935 pattern in providing for general and specific grants in aid to the states (Article 273 and 275).\(^{128}\)

While the Constituent Assembly was engaged in the task of hammering Indian Constitution into shape, a new dimension was added to the settlement of the financial equation between the centre and the component units with the integration of the
former princely states. Under British rule, these states had exercised a great deal of financial autonomy and it was largely owing to their unwillingness to surrender their fiscal independence that they had refused to join the All India Federation contemplated under the Government of India Act, 1935.\(^{129}\)

Within a year of independence by the efforts of the Ministry of States, all the princely states, lying within the territorial boundaries of the Union of India, acceded to Indian union. So the ministry of states set up “The Indian States Financial Enquiry Committee” headed by V.T. Krishnamachari. The Committee recommended that former princely states should contribute to the finances of the Union and receive grants-in-aid and other forms of financial assistance on the same basis as the provinces.

As a result when the framing of the Constitution was completed, the former princely States (which had been integrated into the Union of India as states of the ‘B’ or ‘C’ parts) a uniform pattern of financial relations had been evolved as between the Union on the one hand and all its component unit on the other.\(^{130}\)

A. **Division of Resources between Centre and State**

The Constitution of India allocates the functions and resources in a manner that the problem of overlapping and conflict minimised in India.\(^{131}\)

I. **State Source of Revenue:** The following taxes are levied and collected by States:-

(i) Land revenue, including the assessment and collection of revenue.

(ii) Taxes on agricultural income

(iii) Duties in respect of succession to agricultural land.

(iv) Estate duty in respect of agricultural land.

(v) Taxes on lands and buildings.

(vi) Taxes on mineral rights, subject to any limitation imposed by Parliament by law relating to mineral development.

(vii) Excise duties on goods containing:

- alcoholic liquors for human consumption;
Opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance.\textsuperscript{132}

(viii) Taxes on the entry of goods into a local area for consumption, use or sale therein.

(ix) Taxes on the consumption or sale of electricity.

(x) Taxes on the sale or purchase of goods other than newspapers.

(xi) Taxes on advertisements other than advertisements published in newspapers and advertisements broadcast by radio or television.

(xii) Taxes on goods and passengers carried by road or on inland waterways.

(xiii) Taxes on vehicles, whether mechanically propelled or not suitable for use on road.

(xiv) Taxes on animals and boats.

(xv) Tolls

(xvi) Taxes on professions, trades and employment.

(xvii) Capitation taxes.

(xviii) Taxes on Luxuries including taxes on entertainments, amusements, betting and gambling.

(xix) Rates of stamp duty in respect of documents other than those specified in the provisions of list 1 (entry 91) with regard to rates of stamp duty.\textsuperscript{133}

II. Taxes Levied and Collected by the Union but Assigned to the States.

Under Article 269 of the Constitution of India the following duties and taxes shall be levied and collected by the Government of India but net proceeds in any financial year of any such duty or tax shall be distributed among those states in accordance with such principles of distribution as may be formulated by parliament by law:

(i) Taxes in respect of succession to property other than agricultural land;

(ii) Estate duty in respect of property other than agricultural land;

(iii) Terminal taxes on goods or passengers carried by railway, sea or air;
(iv) Taxes on railway fares and freights.

(v) Taxes other than stamp duties on transactions in stock exchange and future markets.

(vi) Taxes on the sale and purchase of newspapers and on advertisements published therein.

(vii) Taxes on the sale and purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce; and

(viii) Taxes on the consignment of good (whether the consignment is to the person making it or to any other person), where such consignment takes place, in the course of interstate trade or commerce.

III. Taxes levied by the Union but collected and appropriated by the States.

Under Article 268 of the Constitution of India the stamp duties and excise duties on medicinal and toilet preparations as are mentioned in the Union list shall be levied by the Government of India but shall be collected:

(i) In case of Union Territory by the Government of India and

(ii) In case of states by state Government.

IV. Taxes which shall be levied and collected by the Union but which may be distributed between the Union and the states.

(i) Under Article 270 of the Constitution of India, taxes on income other than agricultural income.

(ii) Under Article 272 of the Constitution of India Union duties of excise other than such duties of excise on medicinal and toilet preparation as are mentioned in the Union list and collected by the Union government.

V. Union Taxation

Levy and administration of taxes with wide economic base rest with the Centre.

(i) Taxes on income other than agricultural income.

(ii) Customs duties.

(iii) Excise duties on tobacco and other goods manufactured or produced in India except:
- Alcoholic liquors for human consumption
- Opium, Indian hemp and other narcotic drugs and narcotics, but including medicinal and toilet preparations containing alcohol or any substance included in this paragraph.

(iv) Corporation tax
(v) Taxes on capital values of assets exclusive of agricultural land of individuals and companies; taxes on capital of companies.
(vi) Estate duty in respect of property other than agricultural land.
(vii) Duties in respect of succession to property other than agricultural land.
(viii) Terminal taxes on goods or passengers carried by railway, sea or air, taxes on railway fares and freights.
(ix) Taxes other than stamp duties on transactions in stock exchanges and future markets.
(x) Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of landing, letters of credit, policies of insurances, transfer of shares, debentures, proxies and receipts.\(^{138}\)
(xi) Taxes on the sale and purchase of newspapers and on advertisements published therein.
(xii) Taxes on sale and purchase of goods other than newspapers, where such sale or purchase takes place in the course of interstate trade or commerce.
(xiii) Taxes on the consignment of goods (whether the consignment is to the person making it or to any other person) where such consignment takes place in the course of interstate trade or commerce.\(^{139}\)

As far as the financial relations between the State of Jammu and Kashmir and Indian Union were concerned, the financial integration of the state with Indian Union took place in 1954 during the Prime Ministership of Bakshi Ghulam Mohammad.\(^{140}\) When he abolished the custom barriers between the state and Indian Union on 13\(^{th}\) April, 1954, thereafter the regular financial arrangements were made with the Central government.\(^{141}\) The State got substantial assistance in the form of grants and loans for financing the state plans. Also the finances of the state of Jammu and Kashmir came
within the terms of reference of the Finance Commission and the Planning Commission like other states of Indian Union.

The abolition of customs duty and the transfer of the revenue accruing from income tax and excise duty to the centre resulted in a loss of over Rs. 176.63 lakhs to the states in the financial year 1953-54.\textsuperscript{142} But the central government compensated the loss caused in the state budget, as well as to augment the resources of the state, the central government agreed to allocate a sum of Rs. 250 lakhs to the Jammu and Kashmir during the financial year, 1954-55.\textsuperscript{143} Thus the financial integration of the state which the Sheikh Abdullah resisted was gladly accepted by the Bakshi Ghulam Mohammad.\textsuperscript{144} Before 1954 the State of Jammu and Kashmir undertook a few developmental programmes with financial assistance from the central government in the shape of loans. During the Delhi Agreements of 1952 the two governments agreed to evolve some sort of financial arrangement between the state and Indian Union; the State government felt that a detailed and objective examination of the subject was necessary.\textsuperscript{145}

At the time of first Finance Commission (1951-52 to 1955-56) the state of Jammu and Kashmir had not been financially integrated into the Union of India but the Second Finance Commission (1955-56 to 1960-61) put the state of Jammu and Kashmir on an equal footing with the other states in the matter of financial allocations from central taxes.

The division of taxing powers and the financial resources between the Union and the Jammu and Kashmir state was same as between Union and other states of India. The sources enumerated for the Union in the Union List are demarcated for the exclusive operation of the Union government. No tax-head, enumerated in the Union list, is reallocated to the Jammu and Kashmir and all the tax heads enumerated in the Union list are placed within the exclusive competence of the Union Government provisions with regard to the taxes and duties levied by the Union and collected and appropriated by the states or taxes levied by the Union and divided between the Union and the state are applicable to the state of Jammu and Kashmir as they apply to other Indian states. The reservation made in favour of the state is that entry ninety-seven of the Union List is not applicable to the State and the residuary powers of taxation are not transferred to the union but are vested with state.\textsuperscript{146}
The following provisions relating to the financial arrangements between the states and the union do not apply to Jammu and Kashmir state.

The Provision relating to the state consolidated fund under Article 266, the state Contingency Fund under Article 267(2), the custody 283(2) thereof, and the public accounts of the State (284). These provisions have been incorporated in the Constitution of Jammu and Kashmir. Section 115, 116, 118 and 119 of the Constitution of Jammu and Kashmir are adaptation of Article 266, 267, 283 and 284 respectively. The object of not applying these Articles to Jammu and Kashmir was to enable the state to provide for these matters in its own constitution since they concern each state individually. It was fully in accordance with the spirit of association of Jammu and Kashmir with India.¹⁴⁷

B. Finance Commission

B.N. Rau, constitutional advisor to the constituent assembly, described the Finance Commission as ‘a quasiarbitral body whose function is to do justice between the centre and the states.’¹⁴⁸ The chairman of the Drafting Committee B.R. Ambedkar, visualized the Commission’s role in almost exactly the same terms viz., ‘to do Justice between province and province and between the centre and the provinces.’ Also T.T. Krishnamachari declared that the purpose behind the creation of the Finance Commission was ‘to assure the states that they will have a fair deal.’¹⁴⁹

Composition, Functions and Powers of the Finance Commission

Article 280 of the Constitution of India empowered the president of India to appoint a Finance Commission consisting of a chairman and four members for a period of five years. The functions of the Finance Commission are laid down in clause 3 of Article 280 of the Constitution of India. The Finance Commission advises the President of India with regard to:-

(i) the distribution between the Union and the states of the net proceeds of the taxes which are or may be divided between them and the allocation between the states of the respective shares of such proceeds;

(ii) the principles which should govern grants in aid of the revenues of the states out of the Consolidated Fund of India.
Any other financial matter referred to it by the Parliament.

The Finance Commission is an advisory body and the president is not bound to accept its recommendation. The Finance Commission gives assistance to the states in the form of tax shares and grant-in-aid. The Components of tax shares include: income tax, union excise duty, additional excise duty in lieu of states tax and estate duty.

I. Income Tax

During the second Finance Commission the states of the Indian Union demanded increase in their share of the net proceeds of income tax. It fixed 60% of the net annual proceeds of the various taxes on income other than agricultural income as the share of the States. Different states came up with different proposals. The state of Jammu and Kashmir proposed that half of the share of the states should be distributed on the basis of population and the other half should be allocated according to area. Accordingly the Finance Commission recommended that share should be distributed on the basis of population and that the rest should be allocated on the basis of collections. The share of the Jammu and Kashmir state was fixed at 1.13 percent in the net proceeds of income tax.

The third Finance Commission (1960-61) revised income tax upward further upto 66.6 percent. It restored the formula of the first Finance Commission for the distribution of income tax. It advised that 80 percent should be distributed on the basis of population and that the rest should be disbursed on the basis of collection. Under the third Finance Commission the state of Jammu and Kashmir got 0.7 percent share of the net proceeds of income tax. Similarly the Fourth Finance Commission (1965-66) allocated to the states 75 percent of the proceeds of income tax. It recommended that 80 percent of the sum earmarked for the states should be distributed among them on the basis of population and that the rest should be allocated on the basis of collection. The state of Jammu and Kashmir got a fixed share of 0.73 percent of the net proceeds of income tax. The fifth Finance Commission (1970-71) recommended that 75 percent of the net proceeds of income tax should be assigned to the states. It also recommended that 90 percent of the amount should be allocated on the basis of population and rest should be given on the basis of collection. By this time the state of Jammu and Kashmir received 0.79 percent of the net proceeds of income tax.
Sixth Finance Commission (1975-76) recommended 80 percent of the net proceeds of income tax should be assigned to the states.\(^{159}\) It recommended that 90 percent of the amount earmarked to the states should be allocated on the basis of population and rest should be given on the basis of collection. The share of the state of Jammu and Kashmir was 0.81% of the net annual proceeds of income tax.\(^{160}\)

**II. Union Excise Duties**

The Union and the states share the net annual proceeds of most of the union excise duties. In the light of its discussion with the state governments the first Finance Commission saw the need to augment the financial resources of the states. Therefore, it selected the duties on tobacco, matches, the vegetable products for sharing between the union and the states and among the states, saying that those commodities were of common use and of widespread consumption and also yielded a sizable and reasonably stable sum for distribution year after year.\(^{161}\) The revenue shared from Union excise duties dominated not only the transfer of central tax revenues but also the Finance Commission transfers.

Thus, it is impossible to conceive a scheme of fiscal transfer from the centre to the states which does not provide for sharing of Union excise duties. The revenue from Union excise duties is highly elastic due to widening and deepening of the tax structure by the expansion of coverage to a wide range of commodities, increased consumption, rate increases, increasing use of ad valorem rather than specific tax rates and increase in the prices and output of excisable goods. Thus, Union excise duties had shown a continuous upward trend and formed a major portion of Finance Commission transfers though they were permissible in nature.\(^{162}\)

During the second Finance Commission the share of the states in the net proceeds of the Union excise duties raised from 40 percent to 65 percent.\(^{163}\) While 90 percent of the share of the states in the divisible pool of Union excise duties should be distributed on the basis of population and the rest should be used for purposes of adjustment. Accordingly the share of Jammu and Kashmir was 1.75 percent.\(^{164}\)

Third Finance Commission (1960-61) brought another 35 commodities into the divisible pool of Union excise duties. It recommended that 20 percent of the net annual proceeds collected in respect of these commodities should be deemed to be the share of the states. The basis of distribution was population. The state of Jammu and
Kashmir got the share of 2.02 percent of the net annual proceeds of the Union excise duties.\textsuperscript{165}

In order to enlarge the share of the states in the divisible pool the fourth Finance Commission recommended that in each of the five years beginning from 1st April, 1966 an amount equal to 20 percent of the net annual proceeds of the Union excise duties levied and collected in respect of all the articles in that particular area (except regulatory duties, special excises and duties, and cesses earmarked for specific purposes) should be allocated to the states. It gave 80 percent weightage to population as basis of distribution. It also gave a weightage of 20 percent to the factor of relative economic backwardness.

The share of the state of Jammu and Kashmir was 2.26 percent of the net annual proceeds of the Union excise duties.\textsuperscript{166} The Fifth Finance Commission (1970-71) kept the share of the states in the Union excise duties at 20 percent but further enlarged the size of the divisible pool by recommending the inclusion of the proceeds of certain special excise duties for the year 1972-73 and 1973-74. The share of the state of Jammu and Kashmir was fixed at 1.12 percent of the net proceeds of the Union excise duties.\textsuperscript{167}

The sixth Finance Commission considered per capita income as the best possible yard stick with which to assess the relative economic position of the states. It felt that while weightage for backwardness might to be raised from 20 percent to 25 percent, the share of any state in the context of the inter se distribution of the revenue derived from the Union excise duties should be in proportion to the per capita income of that state multiplied by the population of that state according to the census held in 1971. Accordingly the share of the state of Jammu and Kashmir was 0.9 percent.\textsuperscript{168}

III. Additional Excise duties in lieu of Sales Tax

After consulting different states of the India, the Union government decided in 1956-57 that an additional excise duty should be levied on mill made textiles (cotton, rayon, artificial silk and woolen fabrics), sugar and tobacco (including manufactured tobacco) to replace the sales tax which was than being levied by most of the states and that the net proceeds should be distributed among the states.

It was decided that the proceeds should be accounted for separately and distributed among the states in accordance with the recommendation of the second
The second Finance Commission held that till 1st April 1957 the state of Jammu and Kashmir had not levied any sales tax and that there was, therefore, no question of assigning a share to that state on that account. However, in as much as the incidence of the additional excise duty had to be borne as much as the people of the state of Jammu and Kashmir as by the people of the other states, it saw the injustice of totally denying any share to the State. It therefore recommended that an amount equal to 1.25 percent of the net proceeds should be allocated to the state of Jammu and Kashmir.

During the third Finance Commission (1960-61) the Union government introduced in 1961-62 an additional excise duty on silk fabrics in lieu of the sales tax and asked the third Finance Commission to formulate a scheme for the distribution of the revenue likely to be yielded by this additional excise duty also. The third Finance Commission recommended that the share of the state of Jammu and Kashmir should be increased from 1.25 percent to 1.5 percent of the net proceeds. This was favourable to Jammu and Kashmir.

The fourth Finance Commission did not consider it necessary to make any change in the third commission’s allocations of the additional excise duties. Therefore, the share of the state of Jammu and Kashmir remained at 1.5 percent. To the fifth Finance Commission the state of Jammu and Kashmir told that it did not want any change in the share of the various states in the net proceeds of the additional excise duties. On the other hand it expressed the view that the duties should be extended to cover more items. However, the fifth Finance Commission did not agree to reduce the share of the state to 0.83 percent.

In 1973 various states complained to the Union government that the additional excise duties levied in lieu of sales tax had not yielded revenue of an impressive scale although they had been in force for about fifteen years. So, Government of India asked the 6th Finance Commission to report on the desirability or otherwise of continuing the scheme of levying additional excise duties in place of sales tax. In the light of the recommendations made by the sixth Finance Commission a group of central and state government officials decided that the duties should continue but be subject to certain conditions. The main condition was that the revenue accruing from the additional excise duties should be increased by 10.8 percent of the value of the clearance within two or three years. Both the Centre and the states agreed to this
The sixth Finance Commission was concerned with the issue of formulating a proper scheme of distribution among the states for the revenues raised from the additional excise duties. It sought the view of the various states on the subject, but found that they were altogether at variance with one another.

The state of Jammu and Kashmir, while urging that its share should not be less than 1.5 percent of the net proceeds, pointed out that the growth in the revenues of the State on account of Sales tax should be a broad guide for determining the amount to be allocated out of the proceeds of the additional excise duties. After taking all these views into account, the sixth Finance Commission decided that the most equitable basis on which a state might be allocated its share of the proceeds of the additional excise duties would be: weightage for its population 70 percent, for its domestic product 20 percent and for production 10 percent. On the basis of these recommendations the share of the state of Jammu and Kashmir was fixed at 0.73 percent of the additional excise duties.

IV. Estate Duty

Under Article 269 of the Constitution the Union government is empowered to levy estate duty on property other than agricultural land. The second Finance Commission recommended that the criterion of location of properties subjected to estate duty would be the most appropriate basis for the distribution of the revenue occurring from estate duty. In case of movable properties, the basis of distribution should be population. It also recommended that:-

(i) One percent of the net proceeds of the duty in any financial year should be retained by the Union as proceeds attributable to the various Union territories;

(ii) the balance should be apportioned between immovable properties and other properties in the ratio of the gross value of all such properties as might be brought into assessment in that year;

(iii) the sum thus apportioned to immovable properties should be so distributed among the states as to ensure that the share of each state was in proportion to the gross value of the immovable properties located in that state and

(iv) the sum apportioned to properties other than immovable properties should be distributed among the states on the basis of their populations. It fixed the share
of the state of Jammu and Kashmir at 1.24 percent of the total revenue derived from estate duty.\(^{181}\)

The third Finance Commission made no change in the state’s share of the total revenue derived from estate duty. However, owing largely to rise in the population of the state, the share of the state of Jammu and Kashmir fell to 0.83 percent.\(^{182}\) The fourth\(^{183}\) and fifth\(^{184}\) Finance Commission made no further change in the matter. The Sixth Finance Commission raised the share but only slightly to 0.85 percent.\(^{185}\)

### Table 5.1 Share of Taxes and Duties Transferred from Centre to the State of Jammu and Kashmir (1955-56 to 1975-76).

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Third Finance Commission (1960-61)</td>
<td>0.70</td>
<td>2.02</td>
<td>1.50</td>
<td>0.83</td>
</tr>
<tr>
<td>3.</td>
<td>Fourth Finance Commission (1965-66)</td>
<td>0.73</td>
<td>2.26</td>
<td>1.50</td>
<td>0.83</td>
</tr>
<tr>
<td>4.</td>
<td>Fifth Finance Commission (1970-71)</td>
<td>0.79</td>
<td>2.12</td>
<td>0.83</td>
<td>0.83</td>
</tr>
<tr>
<td>5.</td>
<td>Sixth Finance Commission (1975-76)</td>
<td>0.81</td>
<td>0.90</td>
<td>0.73</td>
<td>0.85</td>
</tr>
</tbody>
</table>

**Source:** Compiled from the reports of the Finance Commission

Regarding income tax the second Finance Commission put the state of Jammu and Kashmir in a relatively happy position but during third, fourth and fifth Finance Commission the state share was reduced. However, the sixth Finance Commission increased the share by 0.02 percent. It did not consider the relative per capita income of the State. Since the income tax proceeds are not so elastic a source of revenue, as other taxes, and duties like the Union excise duties, the share of the state of Jammu and Kashmir in the revenue earned on account of income tax has ceased to be a balancing factor.

As far as the Union excise duties are concerned the share of the state of Jammu and Kashmir showed an upward trend upto the fourth Finance Commission. The fifth Finance Commission reduced this state’s share. The State benefitted from
the fact that in addition to the population factor some weightage was given to a
number of other factors like social and economic backwardness of the state and per
capita income.

The state of Jammu and Kashmir did not get any share in the revenue yielded
by sales tax till 1st April, 1957. So, the second Finance Commission placed its share of
the additional excise duties at 1.25 percent. The third and fourth commissions
increased the State’s share by 0.25 percent. The fifth Finance Commission reduced it
further 0.1 percent. They did so because during fourth and fifth Finance Commission
their general decision to give a weightage 70 percent to population, 20 percent to
state’s domestic product and 10 percent on the basis of production. In case of estate
duty the Jammu and Kashmir received 1.24 percent during second Finance
Commission on properties other than immovable properties and a share in the revenue
earned on account of estate duty on immovable properties in proportion to the gross
value of such properties located in the state. The third Finance Commission reduced
the share of the state to 0.83 percent on the basis of the census held in 1961. This
position continued during the terms of the fourth and fifth commissions. But the sixth
Finance Commission raised the share of the state slightly to 0.85 percent.

V. Grants-in-Aid

In the scheme of the division of powers, the distribution of the revenues is
made in favour of all the states uniformly. However, due to regional disparities and
economic stresses the financial needs of some of the states are more pressing than that
of the others. In order to meet exigencies arising out of the regional and economic
disparities, the constitution provides for a system of ‘Grants-in-Aid’ to the state
chargeable on the Consolidated Fund of India. The grants-in-aid are given to the states
in addition to the assignment of the various tax proceeds including those shared with
the Union government. The grants-in-aid are actually the final balancing instruments
of the resources of the states with their manifold functions particularly in the fields of
social utilities and service.\textsuperscript{186}

Article 275 of the Constitution of India empowered the parliament to make
grant in aid to such states which are in need of assistance.\textsuperscript{187} The parliament makes
the grants every year to the extent deemed necessary. The grants are fixed in
accordance with the recommendations of the Finance Commission.\textsuperscript{188} The proviso to
this article provides for grants-in-aid to states to meet the cost of such schemes of
development as may be approved by the Union government for promoting the welfare of scheduled tribes of raising the level of administration of the scheduled tribe areas.  

The state of Jammu and Kashmir is covered by the constitutional provisions pertaining to the grants-in-aid and in fact the second Finance Commission in its interim report covered the financial integration of the state.  

Further under article 282, the Union government and the states are authorized to make grants for any public purpose notwithstanding that the purpose is not one with respect to which parliament or the legislatures of states, as the case may be, may make law. The Finance Commission has nothing to do with these grants. This provision is inserted in the miscellaneous financial provisions sections of the Constitution on relevant provisions dealing with Union state financial relations. It was not meant to make regular financial assistance. This might have been the reason for including Article 282 in the miscellaneous provisions. The provisions of Article 282 are not applicable to Jammu and Kashmir because of special association of Jammu and Kashmir with Indian Union.  

Thus, in order to correct any imbalance in the distribution of tax proceeds among the various state governments for any class that may have incurred on any account the Constitution of India empowered the Union government to provide grant-in-aid to the states.  

The second Finance Commission recommended grants-in-aid to the states on a much larger scale than the first Finance Commission because the developmental plans of the various states had not been fully formulated during the term of the first Finance Commission. The state of Jammu and Kashmir received the grants-in-aid of Rs. 3 crore a year as it felt that the state was likely to need assistance both for general purposes and for developmental purposes. This second Finance Commission also gave the state another Rs. 10 lakh for the purpose of helping the state in coping with the unexpected natural calamities.  

The third Finance Commission held that it was not possible to make a clear cut demarcation between plan expenditure and non plan expenditure and allocate funds for precise purposes. It recommended Rs. 2 crore per year as grants-in-aid to the
state of Jammu and Kashmir and Rs. 10 lakhs as a special grant to meet unforeseen natural expenditure.\(^{196}\)

The fourth Finance Commission did not concern itself with plan finance and assessed only the shortfall in the total non-plan revenue.\(^{197}\) It ignored the demand made by the various states for grants for special purposes and did not recommend special grants.\(^{198}\) It met only the revenue deficit as estimated for a 5 year period and made no further grants-in-aid to the surplus states. It awarded a sum of Rs. 609.45 crore as grants-in-aid to the deficit states.\(^{199}\) The state of Jammu and Kashmir got its share of Rs. 6.57 crore per year.\(^{200}\) Thus, third Financial Commission increased the share of Jammu and Kashmir by Rs. 4.57 crore annually over the grant-in-aid which state received under third Finance Commission. It also increased the amount required by each state to cope with unexpected natural calamities and accordingly the Jammu and Kashmir got a sum of Rs. 0.28 crore; total during fourth Finance Commission.\(^{201}\)

The fifth Finance Commission kept the special problems of the states of Assam, Jammu and Kashmir and Nagaland constantly in focus while formulating its recommendations on the subjects of grants-in-aid for those states than it did for other states of similar size of having similar resources.\(^{202}\) It recommended that the States whose actual deficits proved to be substantially higher than had originally been estimated should be given larger grants and that such grants should be progressively reduced over the plan period.\(^{203}\) So under fifth Finance Commission the state of Jammu and Kashmir received Rs. 73.68 crore as total amount of grant in aid.\(^{204}\) For unforeseen expenditure the state received Rs. 0.40 crore total for all five years.

The sixth Finance Commission gave importance to the states which were relatively backward in terms of their standards of general administration. It identified certain administrative and social services which were of crucial importance, and proposed that the states whose expenditure in per capita term was below the average for all the states should be enabled to catch up with the average by all the last year of the period covered by it. Among these services it gave importance to primary education, health, the welfare of scheduled castes and the scheduled tribes and the various classes that had been designated as backward. It further suggested that the administrative machinery at the centre and in the planning commission should take special care to ensure that the funds specifically provided for primary education, public health, for welfare of the schedule castes, the scheduled tribes and the various
classes designated backward were not utilized for some other purposes. It decided that all states, whether in receipt of grants-in-aid or not, should be obliged to spend a minimum sum of essential services. It fixed the grant-in-aid for the state of Jammu and Kashmir worth Rs. 173.48 crores for five years. This meant a sum of Rs. 34 crores per year for the state. For unforeseen expenditure the state received Rs. 0.35 crore for total five years.

### Table 5.2 Grants-in-Aid Given to the State of Jammu and Kashmir by Centre from First Finance Commission to Sixth Finance Commission:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Finance Commission</th>
<th>Total Amount of Grant-in-Aid (in crores of Rupees.)</th>
<th>Total amount for Unforeseen Expenditure (in crores of Rupees)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Second Finance Commission (1955-56)</td>
<td>15.00</td>
<td>8.10</td>
</tr>
<tr>
<td>2.</td>
<td>Third Finance Commission (1960-61)</td>
<td>8.00</td>
<td>0.10</td>
</tr>
<tr>
<td>3.</td>
<td>Fourth Finance Commission (1965-66)</td>
<td>32.85</td>
<td>0.28</td>
</tr>
<tr>
<td>4.</td>
<td>Fifth Finance Commission (1970-71)</td>
<td>73.68</td>
<td>0.40</td>
</tr>
<tr>
<td>5.</td>
<td>Sixth Finance Commission (1975-76)</td>
<td>173.49</td>
<td>0.35</td>
</tr>
</tbody>
</table>

**Source:** Reports of Finance Commissions

### C. Planning Commission

The planning Commission was set up in March, 1950 by a resolution of the Government of India. It has no constitutional or statutory basis. Before making recommendations to the Central government, it takes into considerations the political and administrative conditions, the economic and social pattern and the population pressure of each state. It also holds detailed discussion with the officials of the central government and the various state governments, as well as with private industries.

The appointment of planning commission has altered the whole system of centre-state relations. Planning embraces all aspects of economic and social life. So states are to shoulder equal responsibility with the Centre in financing plan outlays. Initially there was confusion over the division of functions between the Finance
Commission and the Planning Commission. It was not evident whether Article 275 should cover grants for meeting plan expenditure or not. After initial confusion a system has developed in which non-plan grants are provided by the Finance Commission under Article 275 whereas plan grants are provided by the Planning Commission under Article 282. These grants have a twofold purpose viz. to help the states financially to fulfil plan goals and to give some leverage to the centre to influence and coordinate state action to effectuate the national plan.\(^\text{211}\)

In addition to grants the Planning Commission also provides assistance in the form of loans to the states for financing the plans. The planning commission proceeds from where the Finance Commission concludes. The emergence of planning commission as an institution regulating the partial flow of financial transfers from the Central to the States has narrowed the scope of the finance commission. A large part of the total transfers are made through the planning commission. These transfers in the form of grants and loans are provided for financing: (i) State plans (ii) Central Sector Schemes (iii) Centrally sponsored scheme.\(^\text{212}\)

I. **Central Assistance to State Plans**

The needs of states for financing the plans are determined by plan size and non-plan budgetary requirements. There is always a gap between a states own resources and its financial requirements to meet the plan expenditure.\(^\text{213}\)

II. **Central Sector Schemes**

Central Sector Schemes are schemes of national importance which are proposed and formulated by the central ministries and approved by the Planning Commission but implemented by state governments. These schemes can be effectively implemented by the states which are in close contact with the needs and expectations of the area wherein such schemes are undertaken.

So the centre entrusts the implementation of these schemes to those states and gives assistance to them in the form of grants and loans to meet the expenditure on them. Assistance for central sector schemes depends upon the nature of each scheme and also on the discretion of the central ministries which sponsor the scheme. The assistance is provided in a matching basis to schemes like Command Area Program, Communicable Disease Control, Primary Education, Family planning, Minor Ports, Pulses and Oil Seeds Programme etc.\(^\text{214}\)
III. Centrally Sponsored Schemes

The states left to themselves or operating through general mechanism of plan assistance may not take up certain projects which have interstate implications and are of national interest like population planning, interstate power transmission lines, Integrated Rural Development Programmes (IRDP) etc. Some states may not spend on projects of high priority because of limited vision or lack of resources.

The centrally sponsored schemes are sponsored by the central ministries and not initiated by the states. The expenditure on these schemes is a part of the central plan and provision is made in the Central government budget. The schemes are proposed and formulated by the ministry involved and approved by the planning commission. These schemes may be entirely financed by the centre or the expenditure may be shared with the states in agreed proportions generally not less than 50:50. In cases where state interests are minimum and the centre’s interests are predominant, the centre meets all expenses. The sharing system has the advantage that it enables states to have a more effective voice in the execution of schemes and also to express their direct interest or lack of it.

The centrally sponsored schemes includes agriculture and allied sectors, family welfare programmes, health, education, power, village and small industries, social welfare, development of backward classes, transport labour welfare and training etc.²¹⁵

IV. Non-Plan Non-Statutory Transfers

Non-plan non-statutory transfers are given by the various ministries of the central government in the form of grants and loans to the states. All these transfers are purely discretionary in nature. Financial assistance is provided under this provision at the discretion of various ministries and particularly the Finance Ministry. Discretionary assistance consists of both conditional and unconditional grants and loans. A large part of discretionary assistance is provided for programmes like relief and rehabilitation, improvement of roads, for procurement of food, to cover additional interest liability, relief or account of natural calamities, ways and means advances, small savings loans, short term loans for fertilizers and loans and clearing of overdrafts of the states.²¹⁶ As far as the state of Jammu and Kashmir is concerned three-fourths of the total plan expenditure of the state of Jammu and Kashmir is met
with the help of grants and loans received from the centre. The centre finances the entire capital budget and 90 percent of the plan expenditure of the state. After the financial integration of the state of Jammu and Kashmir with Indian union in 1954, the state got substantial assistance in the form of grants and loans for financing the state plans. As the resources of the state were quite inadequate for its needs and therefore the Union government gave substantial assistance to the state government in the form of grants and loans for financing the state plans.

Table 5.3. Central Assistance to the state of Jammu and Kashmir During First Four Five years plans:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Plan</th>
<th>Total Plan Expenditure (in lakhs)</th>
<th>Central Assistance(in lakhs)</th>
<th>Percentage of Central Assistance to plan Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>First Plan (1951-52 to 1955-56)</td>
<td>1,151.71</td>
<td>1000.00</td>
<td>87</td>
</tr>
<tr>
<td>2.</td>
<td>Second Plan (1956-57 to 1960-61)</td>
<td>3,120.20</td>
<td>2,000.00</td>
<td>64</td>
</tr>
<tr>
<td>3.</td>
<td>Third Plan (1961-62 to 1965-66)</td>
<td>6,409.34</td>
<td>6,200.00</td>
<td>97</td>
</tr>
<tr>
<td>4.</td>
<td>Fourth Plan (1969-74)</td>
<td>15,840.00</td>
<td>14,500.00</td>
<td>92</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>26,521.25</strong></td>
<td><strong>23,700.00</strong></td>
<td><strong>89</strong></td>
</tr>
</tbody>
</table>


(ii) For IV^th Plan Special Status In Indian Federalism by Hari Ram, p. 91.

Thus the State plans were largely financed by the Union government. The state of Jammu and Kashmir received highest central assistance during first four plans. No other state in Indian union treated with greater consideration since it has been extended aid and assistance out of all proportions to its size, population and economic needs.
for different types of expenditure without any comprehensive and scientific view. The conditions on which central assistance was given to states varied from scheme to scheme, project to project and from state to state. These schemes succeeded in stifling local initiative and enterprise. The states found it administratively cumbersome to finance the large number of schemes with varying conditions. Distortion grew with the schematic approach to planning as the states plan tend to become a conglomeration of centrally aided schemes with a view to attract more central assistance, for even the richest state is too poor to afford such deprivation.  

Central assistance to the plans of the various states had till then sought to cover the sought to cover the gap between the plan outlay of a state as approved and the resources of that state. Therefore, the National Development Council at a meeting held in September, 1968 adopted a formula commonly known as the Gadgil formula for the allocation of central assistance to the states in the context of the fourth Five year plan.

Under the formula, the assistance was given to the states in the form of unconditional block loans and grants. After meeting the requirements of Assam, Jammu and Kashmir and Nagaland the remaining central assistance was distributed among the non-special category states on the basis of the following criteria.  

(i) 60 percent of the assistance was distributed on the basis of population.  
(ii) 10 percent on the basis of tax effort  
(iii) 10 percent on the basis of state’s per capita incomes to be distributed among the states whose per capita income was below the national average.  
(iv) 10 percent to be distributed among the states so as to assist them in tackling certain special problem such as those relating to metropolitan areas, floods, chronically drought affected areas and tribal areas.  

This Gadgil formula reduced the discretionary factor to some extent. This strengthened the confidence of the states in the Planning Commission and thus brought to an end the superstitious bargaining which sometimes accompanied the earlier arrangements. Thus the Gadgil formula put a premium on population and sought to do justice to the poorer states with large areas whose per capita expenditure bore no relation to their needs. Indeed it put the poorer states in a special category in the matter of plan assistance.
During fourth plan the central assistance extended to the states was 57.7 % of the total plan outlay. It was low than third plan (60.4 per cent) and three annual plans (58.9 percent). However, the states of Jammu and Kashmir and Nagaland made no financial contribution towards their respective plan outlays. A lump sum was reserved for giving financial aid to such states.

The central assistance to the total plan outlay of the state of Jammu and Kashmir during the Fourth Plan was 92 percent.224 So, for the emotional integration of the state to Indian union, generous central aid started flowing into the state in the form of share in the central divisible pool of taxes, loans, discretionary grants and investment on centrally sponsored projects were equally lavish.225

Jammu and Kashmir state also remained the least taxed state of India in 1958-59 when per capita taxes in Jammu and Kashmir amounted to Rs. 4.23 in contrast to average of Rs. 9.17 in all other States of India.226

By and large the provisions of Part XII of the Constitution of India dealing with finance etc., apply to the state of Jammu and Kashmir in the same manner as they apply to the other states of India. Those provisions of the Constitution of India which do not apply have been incorporated in the Constitution of the State.227

After May, 1954, the state of Jammu and Kashmir has entered into financial arrangements with the Union government which brought it at par with other states in respect of financial matters including proportionate allocation of funds from the centre.228 The allocations of funds were made on the basis of the recommendations of the various Finance Commissions and the planning commission as well as through budgetary provisions. We conclude that the various Finance Commissions were liberal towards the state of Jammu and Kashmir in recommending allocations of funds and loans for economic development. Similarly Planning Commissions and the Union Budget were also favourable to the state. Central assistance increased from First plan to Fourth Plan. Per capita central assistance for Jammu and Kashmir was also highest in comparison to other states of Indian Union.

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2 Ibid., p.100.
3 These reservations and modifications pertain to save certain subjects in the Union List and the Concurrent List from the jurisdiction of the Union Government and reserve these subjects for the
State Government, reserve the residuary powers of legislation and taxation for the state, and secure the state, in the legislative and administrative spheres, powers which are otherwise vested with the Union Government under the Constitution of India.


At the conclusion of the proceedings of the Constituent Assembly, Dr. Rajendra Prasad referred to the fissiparous tendencies in the various elements of the country’s life—communal differences, caste differences, provincial differences and so forth.

Maheshwari, B.L., Centre-State Relations in the seventies, published by Administrative Staff College of India, Hyderabad, Minerva Associates Calcutta, 1973, p.144.

Cooperative Federalism produces a strong Central government and yet it does not necessarily result in weak provincial governments that are largely administrative agencies for central policies. Chief characteristics of this cooperative system are interdependence between the union and the component parts and also the practice of administrative cooperation between Union and the state governments and the partial financial dependence of the latter on the former. It is an indisputable instrument in the working of the federal system.

Chander Pal, op.cit., pp.74-75.

Ibid., p.75.


Ibid., p.126.


Ibid., p.128.


Chander Pal, op.cit., p.75.

Article 246 (2) and 246 (3) of the Constitution of India.

Seventh Schedule of the Constitution of India, Concurrent List, Items 3, 6 and 26.

Chander Pal, op.cit., p.76.

Ibid., p.79.

Article 246 (1), Constitution of India.


Kaul, Santosh, Kashmir’s Constitutional Status, op.cit., p.102.


Seventh Schedule of the Constitution of India.


The aim of the central Bureau of Intelligence and Investigation was to collect criminal information throughout India, which the Union Government could communicate to the state governments so that police could more efficiently deal with criminal activities extending beyond the state frontiers. The exclusion of Jammu and Kashmir may possibly have consequences for India and Kashmir.
The Constitution of India envisages three types of Emergency: First, under Article 352, when the President is satisfied that a grave emergency exists, where by security of India or any part of its...
territory is threatened by external aggression or “armed rebellion”. Second, an emergency in the states under Article 356 wherein the President, on receipt of a report from the Governor of a state or otherwise, is satisfied that a situation has arisen in which the government of a state cannot function in accordance with the provisions of the Constitution. This emergency arises due to the failure of the constitutional machinery in the state or states. Third, Financial Emergency under Article 360. It arises if the President is satisfied that a situation has arisen, whereby the financial stability or credit of India or any part of the territory is threatened.

64 The Constitution of India, Article 355.
65 The Constitution of India, Article 250.
66 Sharma, S.K., op.cit., p.49.
67 Chander Pal, op.cit., p.89.
69 Chander Pal, op.cit., pp.95-96.
71 Chander Pal, op.cit., p.103.
72 Ibid., p.104.
73 Ibid., p.104.
75 Chander Pal, op.cit., p.118.
76 The Constitution of India, Article 256.
77 The Constitution of India, Article 257(1).
78 The Constitution of India, Article 257(2).
79 The Constitution of India, Article 257(3).
80 Sharma, S.K., op.cit., p.50.
81 Chander Pal, op.cit., p.119.
82 Sharma, S.K., op.cit., p.51.
83 The Constitution of India, Article 261.
84 The Constitution of India, Article 261(1).
85 The Constitution of India, Article 261(2).
86 Sharma, S.K., op.cit., p.52.
87 The Constitution of India, Article 262.
88 Sharma, S.K., op.cit., p.52.
89 Ibid., p.52.
90 Maheshwari, B.L., op.cit., p.118.
91 The Constitution of India, Article 263.
93 Maheshwari, B.L., op.cit., p.118.
Parties to the dispute must be the Constituent Units of Federation. A dispute between an individual and the Union or an individual and a state does not come, within the original jurisdiction of the Supreme Court under Article 131.

The Constitution of India, Article 312.

The Constitution of India, Article 131.

The Constitution of India, Article 132.

The Constitution of India, Article 144.


The Constitution of India, Article 217.

The Constitution of India, Article 352.

The Constitution of India, Article 353 (a) (b).

The Constitution of India, Article 354.

The Constitution of India, Article 352.

The Constitution of India, Article 353 (a) (b).

The Constitution of India, Article 354.

The Constitution of India, Article 352.


The Constitution of India, Article 360.
129 Ibid., p.28.
130 Ibid., pp. 28-29.
133 Ibid., pp.36-37.
134 Muppidi, Sarojini, op.cit., pp.31-32.
135 Ibid., p.32.
136 Misra, B.R., op.cit., p.37
137 Ibid., pp.37-38.
139 Ibid., p.31.
140 Hari Ram, op.cit., p.90.
141 Bamzai, P.N.K., Culture and Political History of Kashmir, op.cit., p.813.
144 Hari Ram, op.cit., p.90.
146 Kaul, Santosh, Kashmir’s Constitutional Status, op.cit., p.122.
147 Anand, A.S., op.cit., p.171.
148 Quoted by Bombwall, Raman, op.cit., p.66.
149 Ibid., p.66.
150 Ibid., pp.68-70.
151 Muppidi, Sarojini, op.cit., p.58.
152 Chander Pal, op.cit., p.145.
154 Ibid., p.40.

Ibid., p.28 and 30.

Chander Pal, op.cit., p.145.


Mupiidi, Sarojini, op.cit., p.59.


Ibid., p.44.


Ibid., pp.61-62.


Ibid., p.35.


Ibid., p.45.


Ibid., pp.18-19.

Ibid., p.21.

The Constitution of India, Article 269.


Ibid., pp.51-52.


Bombwall, Raman, op.cit., p.36.

Kaul, Santosh, Kashmir’s Constitutional Status, op.cit., p.123.

Bombwall, Raman, op.cit., p.36.

Muppidi, Sarojini, *op.cit.*, p.34.


The Deficit States were Andhra Pradesh, Assam, Bihar, Gujarat, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Maharashtra, Mysore, Nagaland, Orissa, the Punjab, Rajasthan, Uttar Pradesh and West Bengal.


Hari Ram, *op.cit.*, p.90.


Muppidi, Sarojini, *op.cit.*, p.49.


224  Hari, Ram, *op.cit.*., p.94.


226  Hari, Ram, *op.cit.*., p.91.
