matching grants. We mention them here because neither the Planning Commission nor the State Governments nor ourselves have been able to calculate their impact on the finances of the States with any degree of accuracy.

27. Some anomalies inevitably arise where the functions of the two Commissions, the Finance Commission and the Planning Commission, overlap. The former is a statutory body with limited functions, while the latter has to deal comprehensively with the finances of the Union and the States in the widest sense of the term. So long as both these Commissions have to function, there appears to be a real need for effectively co-ordinating their work. It will be an advantage if, in future, the period covered by the recommendations of a Finance Commission coincides with that of a five year plan. Further, it is desirable to eliminate the necessity of making two separate assessments of the needs of the States.

IV. Constitutional Aspects

28. We shall examine briefly the provisions of the Constitution relating to the work of the Finance Commission. The relevant articles are reproduced in Appendix IX.

29. According to article 280, the Finance Commission have to make recommendations to the President on two specific matters and on "any other matter referred to the Commission by the President in the interests of sound finance".

30. The two specific matters are—

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

(ii) the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India.

31. The Constitution makes it mandatory under article 270 to divide taxes on income other than agricultural income between the Union and the States. For this purpose, taxes on income exclude

corporation tax and any surcharge which may be levied for Union purposes. To the extent that the net proceeds of taxes on income represent proceeds attributable to Union territories or to taxes payable in respect of Union emoluments, they are retained by the Union. The Constitution also contains in article 272 an enabling provision under which, if Parliament so prescribes by law, Union duties of excise other than duties of excise on medicinal and toilet preparations may be divided.

32. In the case of income tax, the Commission are charged with the duty of making the following recommendations:—

(i) the percentage of the net proceeds of taxes on income, excluding the taxes payable in respect of Union emoluments, which shall be deemed to represent proceeds attributable to Union territories;

(ii) the percentage of the net proceeds in any financial year of taxes on income other than agricultural income, except in so far as those proceeds represent proceeds attributable to Union territories or to taxes payable in respect of Union emoluments, which shall not form part of the Consolidated Fund of India but shall be assigned to the States within which that tax is leviable in that year and the manner in which, and the time from which, such percentage shall be distributed among the States.

33. The President, after considering the recommendations of the Finance Commission, has to prescribe by order the percentages and the manner of distribution. Parliament is not directly concerned with the assignment and distribution of income tax.

34. The position is different in respect of the distribution under article 272 of Union duties of excise. This article does not refer to the Finance Commission. The Commission's jurisdiction to deal with this distribution is derived from the provisions of article 280(3) (a). It is also open to the President to make a specific reference in this matter to the Commission. There is no obligation on the part of the Union to share the excise duties with the States. When it decides to do so, this has to be done by a law of Parliament, which has to prescribe which of the excise duties, and whether the whole or any part of such duties, should be paid out of the Consolidated Fund of India to the States. The principles of distribution among the States have also to be prescribed by law. In the case of excise duties, the

Finance Commission's recommendations will assist the ... Government in placing appropriate legislation before Parliament.

35. Article 280, as originally enacted, required the Commission to make recommendations on another matter, namely, the continuance or modification of the terms of any agreements entered into under articles 278 and 306 with States in Part B of the First Schedule. The Constitution (Seventh Amendment) Act, 1956, abolished Part B States and deleted these two articles as well as the sub-clause of article 280 dealing with such agreements.

36. The Commission have also to make recommendations to the President in regard to the sums which may be prescribed by him under article 273 as grants-in-aid of the revenues of the States of Assam, Bihar, Orissa and West Bengal in lieu of the assignment of any share of the net proceeds in each year of export duty on jute and jute products. These sums are payable so long as any export duty on jute or jute products continues to be levied by the Government of India or until the expiration of ten years from the commencement of the Constitution, whichever is earlier.

37. Article 275 deals with the grants-in-aid of the revenues of the States. These grants-in-aid are to be provided by law of Parliament; but clause (2) of this article states that until provision is made by law, the President can exercise this power by order. His power is, however, conditioned by the proviso "that after a Finance Commission has been constituted no order shall be made under this clause by the President except after considering the recommendations of the Finance Commission". No reference to the Commission is necessary, if the grants-in-aid are provided by law of Parliament or if the President considers that no State is in need of assistance. The President has, however, referred the matter to the Commission. But, as mentioned in paragraph 3, the grants contemplated under the two provisos to article 275(1) have been held to be outside the jurisdiction of the Commission.

38. Under article 280(3)(b) the Finance Commission have the duty of making recommendations as "to the principles which should govern the grants-in-aid of the revenues of the States out of the Consolidated Fund of India".

39. Under article 280(3)(c) the President may refer to the Commission any matter which he considers to be in the interests of sound

finance. Under this provision, we have been asked to make recommendations as to the principles which should govern the distribution, among the States, of the net proceeds in any financial year of

(a) the estate duty in respect of property other than agricultural land;

(b) the tax on railway fares; and

(c) the additional duties of excise on mill-made textiles, sugar and tobacco (including manufactured tobacco), to be levied in replacement of the sales taxes on those articles.

In the case of the last item, we have also been asked to recommend the amounts which should be assured to each State as the income now derived by it from the levy of the sales taxes on these commodities.

40. The Commission have further been asked under the same provision to recommend the modifications, if any, in the rates of interest and the terms of repayment of the loans made to the various States by the Government of India between 15th August 1947 and 31st March 1956.

41. The recommendations regarding the three additional terms of reference mentioned in paragraph 39 above have to be implemented by law of Parliament, while those relating to loans may be given effect to by executive order.

42. The estate duty and the tax on railway fares are taxes included in article 269 of the Constitution. Clause (2) of that article states that "the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Union territories, shall not form part of the Consolidated Fund of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law".

43. Except in relation to the Union territories and to the extent of a Central surcharge, if any, the Union Government have no share in these taxes and are entrusted merely with their levy, collection and distribution. It is obvious that these taxes have been placed under the Union Government to ensure uniformity of taxation and convenience of collection. As regards distribution, though Parlia-